

# **INVITATION FOR BIDS**

## **VILLAGES OF KAPOLEI - LANDSCAPE MAINTENANCE**

**Kapolei (Ewa), Oahu, Hawaii**

**HHFDC JOB NO. 15-001-K85-S**

**January 2015**

**PREPARED BY:**

**Hawaii Housing Finance and Development Corporation  
State of Hawaii**

NOTICE TO BIDDERS  
(Chapter 103D, HRS)

Sealed bids will be received at the Hawaii Housing Finance and Development Corporation ("HHFDC"), 677 Queen Street, Suite 300, Honolulu, Hawaii 96813 up to 4:00 p.m. on **January 29, 2015**, for HHFDC Job No. 15-001-K85-S, Villages of Kapolei Landscape Maintenance, Kapolei, Hawaii 96707 at which time all properly-received and time-stamped bids will be opened and read out loud.

Beginning **January 2, 2015**, the INVITATION FOR BIDS may be examined and purchased at HHFDC at the above address. The purchase price for each set of INVITATION FOR BIDS is a non-refundable \$20.00. Cash will be accepted. A cashier's or certified check made payable to "Hawaii Housing Finance and Development Corporation" will also be accepted. Personal checks or personal business checks will not be accepted.

The scope of services consists of the maintenance of all areas described in the INVITATION FOR BIDS. Landscape maintenance will involve mowing, weeding, fertilizing, tree trimming, removal and disposal of debris, trash and cuttings, and shall also include the maintenance and repair of the irrigation system for all areas to be maintained. Bidders are encouraged to visit the site requiring this service to familiarize themselves with existing conditions and the extent of services required as stated in the scope of services. Notice of Intent to Bid must be received and time stamped at the Office of the HHFDC no later than **2:00 p.m., Thursday, January 15, 2015**, the tenth (10) calendar day prior to the date designated for the opening of the bids. Forms are included in the bidding documents and are available at the above address. The Notice of Intent to Bid may be filed by fax at (808) 587-0600. Bidders must possess a valid State of Hawaii Contractor's Type "A" or specialty "C-27" License to be eligible to bid.

All bids shall include the State General Excise Tax of 4.712%. The HHFDC may reject any and all bids and may waive any bid defects whenever HHFDC deems such action is in the best interest of HHFDC. The determination of the successful bidder will be made by HHFDC.

A Pre-Bid Conference will not be conducted. Bidders are encouraged to visit the various designated locations on the map provided in the bid documents to familiarize themselves with existing conditions and the extent of services required as stated in the scope of services.

Questions relating to this bid solicitation or persons requiring special needs/auxiliary aids (e.g. sign language, large print or other media) for this INVITATION FOR BIDS, may contact Project Coordinator Beth Malvestiti at 587-0546. Written questions may be submitted by facsimile at 587-0600.



Craig K. Hirai, Executive Director  
Hawaii Housing Finance and Development Corporation

DEC 23 2014

Date

Honolulu Star Advertiser  
Issue of January 2, 2015

**PART I**

**BIDDING AND CONTRACT REQUIREMENTS**

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END OF SECTION

# CONTRACTOR'S/VENDOR'S NOTICE OF INTENT TO BID

Date: \_\_\_\_\_

Executive Director  
Hawaii Housing Finance and Development Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813

Attention:

Gentlemen:

In accordance with the provisions of Section 103D-310, Hawaii Revised Statutes and Hawaii

Administrative Rules 3-122-108, it is the intent of the undersigned to bid on

HHFDC Job No. 15-001-K85-S, Villages of Kapolei Landscape Maintenance

for which bids will be opened on \_\_\_\_\_.

\_\_\_\_\_  
(Name of Firm)

\_\_\_\_\_  
(Contractor's License No.)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Hawaii General Excise Tax No.)

\_\_\_\_\_  
(City, State)

\_\_\_\_\_  
(Zip Code)

\_\_\_\_\_  
(Telephone/Fax No.)

Sincerely yours,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

END NO. 1

Date \_\_\_\_\_

Gentlemen:

The Hawaii Housing Finance and Development Corporation acknowledges your Notice of Intent to Bid on  
HHFDC Job No. 15-001-K85-S this date.

Sincerely yours,

\_\_\_\_\_  
Executive Director

## Statement of Bidder's Maintenance Experience

(Prime Bidder)

All questions 1 through 15 must be answered and the data given must be clear and comprehensive. This statement must be notarized. If necessary, add separate sheets for questions marked by an asterisk (\*).

1. Name of bidder.
2. License number(s).
3. Permanent main office address.
4. When organized.
5. Where incorporated.
6. How many years have you been engaged in the contracting business under your present firm name?
7. \*Contracts on hand: (Schedule these, showing gross amount of each contract and the approximate anticipated dates of completion.)
8. \*General character of work performed by your company.
9. \*Have you ever failed to complete any work awarded to you? If so, where and why?
10. \*Have you ever defaulted on a contract?
11. \*List the more important projects recently completed by your company, stating approximate cost for each, and the month and year completed.
12. \*List your major equipment available for this project.
13. \*Experience in work similar in importance to this project. List References and phone numbers.
14. Will you, upon request fill out a detailed qualification statement and furnish any other information that may be required by the Hawaii Housing Finance and Development Corporation?

15. The undersigned hereby authorizes and requests any person, firm, or corporation to furnish information requested by the Hawaii Housing Finance and Development Corporation in verification of the recitals comprising this Statement of Bidder's Maintenance Experience.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_.

(Name of Bidder)

By \_\_\_\_\_

Title \_\_\_\_\_

State of \_\_\_\_\_ )  
\_\_\_\_\_ ) SS.  
\_\_\_\_\_ County of \_\_\_\_\_ )

\_\_\_\_\_, being duly sworn deposes and says that he/she is \_\_\_\_\_ of \_\_\_\_\_ and that the answers to the foregoing questions and all statements therein contained are true and correct.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_.

Notary Public, \_\_\_\_\_  
Judicial Court  
State of Hawaii

My commission expires \_\_\_\_\_

(Bidder may submit additional information if desired.)

## MANDATORY SUBMITTALS

### Submitted At Least Ten (10) Calendar Days Prior to Bid Opening Date

- 1) Intent to Bid ..... NOI-1
- 2) Statement of Bidder's Experience.....SBCE-1 to SBCE-2

### Submitted as Part of Bid

- 1) Form of Bid .....P-1 to P-12
- 2) Non-Default Affidavit ..... 1
- 3) Non-Collusive Affidavit ..... 1
- 4) Non-Gratuity Affidavit ..... 1
- 5) Valid Tax Clearance Certificate ..... Not Inserted
- 6) Certificate of Good Standing .....Not Inserted
- 7) Certificate of Compliance (LIR#27) .....Not Inserted

### Submitted Prior to Award of Contract

Submit any of the following if the approval date is six months or more:

- 1) Valid Tax Clearance Certificate ..... Not Inserted
- 2) Certificate of Good Standing .....Not Inserted
- 3) Certificate of Compliance (LIR#27) .....\*Not Inserted

\*NOTE: In lieu of submitting items 5-7 and 1-3 above, Contractor shall utilize the Hawaii Compliance Express (HCE) system online at <https://vendors.ehawaii.gov/hce> and submit a "Certificate of Vendor Compliance" to meet the requirement of Hawaii Revised Statutes (HRS), Section 103D-301©, and Hawaii Administrative Rules (HAR), Section 3-122-112.

### Submitted with Contract

- 1) Contract Documents ..... FC-1 to FC-8
- 2) Non-Gratuity Affidavit .....1
- 3) Certificate of Compliance for Employment of State Residents.....1
- 4) Certificate of Insurance (with HHFDC and State of Hawaii named as  
Additionally Insured) .....Not Inserted

### Submitted Within 10 Days After Contract Execution

- 1) Schedule of Submittals
- 2) Schedule of Values
- 3) List of Supervisory Personnel and Emergency Contact List

### Submitted During Contract Period

- 1) Certified Payrolls (All Contractors/Subcontractors)
- 2) Notice for Final Inspection

- 3) Maintenance Progress Schedule
- 4) Lien Release Forms
- 5) Overtime/Holiday/Weekend Notification

NOTE: Notice for Final Inspection must be turned in sixteen (16) days prior to Final Inspection

Submitted at Closing

- 1) Substantial Completion Notification
- 2) Final Pay Request
- 3) Final Payroll Records
- 4) Certificate of Compliance For Final Payment (Reference §3-122-112,HAR)
- 5) Non-Gratuity Affidavit
- 6) Tax Clearance, Form A-6 (1/98)
- 7) Certificate of Release from each subcontractor
- 8) Evidence that the Contractor paid or secured claims for persons, firms or corporations who have done work or supplied materials, tolls, equipment, machinery or other services.

NOTE: Submit the above, only if it applies to this contract.

The sum necessary to meet the claims of the State may be retained from the sums due the Contractor, until said claims have been fully and completely discharged or satisfied.

The filing of false affidavits will disqualify the Contractor from bidding on future work of the HHFDC.

Notice for Subcontractors:

- 9) Certified Payrolls – All Subcontractors & Lower Subcontractor

END OF SECTION

FORM OF BID

JOB NO. 15-001-K85-S

**VILLAGES OF KAPOLEI  
LANDSCAPE MAINTENANCE**

TAX MAP KEY: 1-9-001-016: 126, various

To: Executive Director  
Hawaii Housing Finance and Development  
Corporation (HHFDC)  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813

1. The undersigned Bidder hereby acknowledges visiting the site of work, being familiar with the conditions under which the work is to be performed and reading the specifications and other contract documents relating to Job No. 15-001-K85-S, Villages of Kapolei - Landscape Maintenance. The undersigned Bidder hereby proposes to furnish all labor, materials, equipment, tools, transportation, permits, incidentals and supplies required to complete the project in full accordance with the contract documents for the following price(s).

**BASE BID:** The work detailed in the Technical Specification including General Maintenance, Landscape Maintenance, and Frequency of Maintenance, inclusive of mowing, weeding, hedge trimming, overgrowth removal, fertilizing, tree trimming, irrigation repair and replacement, and removal of all clippings, debris, and trash as specified in the line items below, for a grand total lump sum amount noted below (which includes the Hawaii General Excise Tax of four point seven one two percent (4.712%)).

Item No.	Estimated Quantities	Description	Unit Price	Total
1.	24	<b>Months.</b> Areas "A" and "B" (Entries at Kealanani Avenue and Kama'aha Avenue), inclusive of planting, mowing, hedge trimming, fertilizing and irrigation, twice per month.		
		Each Month	\$ _____	\$ _____

2.           **24       Months.** Areas "C" and "D"  
(Interior Roads Rights-of-Ways:  
Kealanani Avenue, Kama'aha  
Avenue and Kama'aha Loop, Kaiau  
Avenue along Paeko Gardens),  
inclusive of planting, mowing, hedge  
trimming, fertilizing and irrigation,  
twice per month.

Each Month                   \$ \_\_\_\_\_ \$ \_\_\_\_\_

3.           **24       Months.** Area "E" (Northwest  
Corner) inclusive of mowing,  
hedge trimming, overgrowth, trash  
removal and irrigation, once per  
month.

Each Month                   \$ \_\_\_\_\_ \$ \_\_\_\_\_

4.           **24       Months.** Area "F" (Vacant 9.12  
acre Lot within Village 8) inclusive  
of mowing, overgrowth, and trash  
removal, once per month.

Each Month                   \$ \_\_\_\_\_ \$ \_\_\_\_\_

5.           **24       Months.** Area "H" (Farrington  
Highway Makai), inclusive of  
planting, overgrowth, trash  
removal and irrigation, twice per  
month.

Each Month                   \$ \_\_\_\_\_ \$ \_\_\_\_\_

6.           **24       Months.** Area "I" (Fort Barrette  
Road shoulder from Kapolei  
Parkway to Farrington Highway),  
inclusive of mowing, overgrowth  
and trash removal, once per  
month.

Each Month                   \$ \_\_\_\_\_ \$ \_\_\_\_\_

7.           **24       Months.** Area "J" (Bisecting  
Park), inclusive of planting,  
mowing, hedge trimming,  
fertilizing and irrigation, four  
times per month.

Each Month                   \$ \_\_\_\_\_ \$ \_\_\_\_\_



8.           **24**       **Months.** Areas "K" and "L"  
 (Kapolei Parkway and median  
 at lower Kama'aha Avenue  
 adjacent to Kapolei Middle  
 School) inclusive of mowing,  
 trash removal and irrigation,  
 twice per month.

Each Month                   \$ \_\_\_\_\_ \$ \_\_\_\_\_

9.           **24**       **Months.** Area "R" (Kuloa  
 Avenue medians) and Area "S"  
 (Kowelo Avenue Entry, Kowelo  
 Avenue median and shoulders,  
 Kolili Street, Common Area Lots  
 at Oaheae Way and Kolili  
 Place), inclusive of planting,  
 mowing, hedge trimming,  
 fertilization and irrigation, twice  
 per month.

Each Month                   \$ \_\_\_\_\_ \$ \_\_\_\_\_

10.          **24**       **Months.** Area "T" (Portion of  
 Maintenance Yard by Non-  
 potable Reservoir), inclusive of  
 mowing, overgrowth and trash  
 removal, once per month.

Each Month                   \$ \_\_\_\_\_ \$ \_\_\_\_\_

11.          **4**        **Semi-Annual.** Tree Trimming  
 of Street Trees Within Major  
 Roads (Kealanani Avenue,  
 Kumu Iki Street, Kama'aha  
 Avenue, Kama'aha Loop, Kaiau  
 Avenue, Bisecting Park, Kapolei  
 Parkway, 9 Acre Vacant Parcel,  
 Kuloa Avenue, Namahoe Street,  
 Oaniani Street, Kowelo  
 Avenue), inclusive of all street  
 trees and palms (nearly 520  
 trees total).

Each Semi-Annual           \$ \_\_\_\_\_ \$ \_\_\_\_\_

- 1,000**

\$ \_\_\_\_\_ \$ \_\_\_\_\_

- ## Allowance

**\$ 175,000.00**

- ## Allowance

**\$ 60,000.00**

\$ \_\_\_\_\_

**GRAND TOTAL BASE BID (Item No. 1 through Item 14 of the Base Bid)**

(which includes the State of Hawaii General Excise Tax of four point seven one two percent (4.712%))

         DOLLARS (\$                    ).

**The contract time shall be 730 calendar days.**

### **MULTI-TERM BID SCHEDULE**

Bid for Two-year Additional Term (option period) or pro-rata pursuant to the multi-term contract provision set forth in Attachment S-3, Paragraph F of the Contract:

Item No.	Estimated Quantities	Description	Unit Price	Total
15.	24	<b>Months.</b> Areas "A" and "B" (Entries at Kealanani Avenue and Kama'aha Avenue), inclusive of planting, mowing, hedge trimming, fertilizing and irrigation, twice per month.		
		Each Month	\$ _____	\$ _____
16.	24	<b>Months.</b> Areas "C" and "D" (Interior Roads Rights-of-Ways: Kealanani Avenue, Kama'aha Avenue and Kama'aha Loop, Kaiau Avenue along Paeko Gardens), inclusive of planting, mowing, hedge trimming, fertilizing and irrigation, twice per month.		
		Each Month	\$ _____	\$ _____
17.	24	<b>Months.</b> Area "E" (Northwest Corner) inclusive of mowing, hedge trimming, overgrowth, trash removal and irrigation, once per month.		
		Each Month	\$ _____	\$ _____
18.	24	<b>Months.</b> Area "F" (Vacant 9.12 acre Lot within Village 8), inclusive of mowing, overgrowth and trash removal, once per month.		
		Each Month	\$ _____	\$ _____

19.        24        **Months.** Area "H" (Farrington Highway Makai), inclusive of planting, overgrowth, trash removal and irrigation, twice per month.
- Each Month        \$ \_\_\_\_\_ \$ \_\_\_\_\_
20.        24        **Months.** Area "I" (Fort Barrette Road shoulder from Kapolei Parkway to Farrington Highway), inclusive of mowing overgrowth and trash removal, once per month.
- Each Month        \$ \_\_\_\_\_ \$ \_\_\_\_\_
21.        24        **Months.** Area "J" (Bisecting Park), inclusive of planting, mowing, hedge trimming, fertilizing and irrigation, four times per month.
- Each Month        \$ \_\_\_\_\_ \$ \_\_\_\_\_
22.        24        **Months.** Areas "K" and "L" (Kapolei Parkway and median at lower Kama'aha Avenue adjacent to Kapolei Middle School) inclusive of mowing, trash removal and irrigation, twice per month.
- Each Month        \$ \_\_\_\_\_ \$ \_\_\_\_\_
23.        24        **Months.** Area "R" (Kuloa Avenue medians) and Area "S" (Kowelo Avenue Entry, Kowelo Avenue median and shoulders, Kolili Street, Common Area Lots at Oaheahe Way and Kolili Place), inclusive of planting, mowing, hedge trimming, fertilizing and irrigation, twice per month.
- Each Month        \$ \_\_\_\_\_ \$ \_\_\_\_\_

24.	24	Months. Area "T" (Portion of Maintenance Yard by Non-Potable Reservoir), inclusive of mowing, overgrowth and trash removal, once per month.	Each Month	\$ _____	\$ _____
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25.	4	<b>Semi-Annual.</b> Tree Trimming of Street Trees Within Major Roads (Kealanani Avenue, Kumu Iki Street, Kama'aha Avenue, Kama'aha Loop, Kaiau Avenue, Bisecting Park, Kapolei Parkway, 9 Acre Vacant Parcel, Kuloa Avenue, Namahoe Street, Oaniani Street, Kowelo Avenue), inclusive of all street trees and palms (nearly 520 trees total).	Each Semi-Annual	_____	\$ _____
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26.	1,000	<b>Each Tree.</b> Tree Trimming of Street Trees Within Minor Roads (Trimming on an individual basis along residential roadway frontages within Villages 1, 2, 3, 4, 5 and 7. Excludes street trees within Village 6 and Village 8).	Each Tree	_____	\$ _____
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27.	Allowance	Allowance for irrigation repairs and replacement, subject to HHFDC's prior approval (submit force account rates)	Allowance	\$	175,000.00
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28.	Allowance	Allowance for Plant or Tree Removal and Replacement, subject to HHFDC's prior approval (submit force account rates)	Allowance	\$	60,000.00
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Total Sum, Items 15 through 28  
inclusive for MULTI-TERM  
PERIOD, subject to the multi-  
term provision of the Contract

\$ \_\_\_\_\_

2. The Bidder shall complete this Bid for all the itemized line items in this Bid. If any or all of itemized line items are removed from the executed contract, the contract time and the contract cost will be adjusted accordingly.
3. In submitting this Bid, it is understood that the award of contract will be made to the lowest responsive and responsible bidder for the GRAND TOTAL BASE BID, subject to the availability of funding.
4. Failure to complete this Bid in its entirety may cause this Bid to be considered non-responsive and may result in rejection of this Bid.
5. The undersigned also agrees as follows:
  - (a) That the estimated quantities in this Bid are approximate only and are subject to increase or decrease.
  - (b) To complete the work whether the estimated quantities are increased or decreased at the unit prices stated in this Bid.
  - (c) That the estimated quantities in this Bid are only for the purpose of comparing bids offered for the work on a uniform basis, and that the undersigned is satisfied with and will at no time dispute the estimated quantities as a means of comparing the bids.
  - (d) To make no claim for anticipated profit or loss of profit because of a difference between the quantities of the various classes of work done or the material and equipment actually installed and the estimated quantities.
  - (e) That if the UNIT PRICE multiplied by the estimated quantity does not equal the total price of any item in this Bid, the correct total price of the item shall be the amount arrived at by multiplying the UNIT PRICE by the estimated quantity.
  - (f) That for UNIT PRICE items, payment will be made only for the actual number of units completed at the UNIT PRICE.
  - (g) That the UNIT PRICE for each item in this Bid includes the cost of all materials, equipment, labor and all other incidental work required for the completion of the work.

- (h) That the basis of comparison will be the Base Bid.
- (i) That all bids submitted include the State of Hawaii general excise tax of 4.712%.
- (j) That the time of completion for all the work in this Bid shall be 730 calendar days from the date of commencement indicated in the Notice to Proceed. Any extension of the Contract time will require the approval of the HHFDC Director as specified in the General Conditions.
- (k) That HHFDC may extend the contract time and increase the contract sum after 730 calendar days from the date of commencement by no more than 730 calendar days and at the given unit prices in the Bid, respectively. See multi-term provision in Attachment – S3 of the Contract.
- (l) That allowance work will be paid for on a cost-plus fifteen percent (15%) for overhead and profit, for work done by the Contractor's own forces, and cost-plus seven percent (7%) for overhead and profit, for work done by the Contractor's subcontractor. Further, the HHFDC may require the Contractor to submit invoices, receipts and/or other information.
- (m) That the liquidated damages for every calendar day of delay in the completion of the work shall be **\$150.00** per day as specified in the "Liquidated Damages" section of the Special Conditions.
- (n) That HHFDC reserves the right, in its sole discretion, to reject any or all bids.
- (o) That this Bid may not be withdrawn within sixty (60) calendar days subsequent to the opening of bids or any extension of time as may be requested by the Director.
- (p) That upon acceptance of this Bid, the undersigned will enter into, execute and deliver a contract in the prescribed form by HHFDC, and current state and federal tax clearances within ten (10) days after the contract is presented to the undersigned for signature or within such further time as the Director may allow.
- (q) That by submitting this proposal, the undersigned is declaring that if awarded a contract, the undersigned will comply with Section 11-355.5, Hawaii Revised Statutes, which prohibits campaign contributions from State and County government contractors during the term of their contract, where the contractor is paid with funds appropriated by a legislative body.

6. The following documents shall be attached to this Bid:

- (a) An affidavit in proof that the undersigned is not in default of any contract with the State of Hawaii.
  - (b) An affidavit in proof that the undersigned has not entered into any collusion with any other person with respect to the submission of this Bid or any other bid for the work.
  - (c) Current tax clearances from the Director of the Department of Taxation and the Internal Revenue Service.
  - (d) Certificate of Good Standing from the Department of Commerce and Consumer Affairs.
  - (e) Certificate of Compliance from the Department of Labor and Industrial Relations.
  - (f) Bidder's Specialty Contractor C-27 Landscape License No. \_\_\_\_\_  
(attach copy)
  - (g) Bidder's Commercial Applicators of Restrictive Pesticides Certification  
(attach copy)
  - (h) Certificate of Compliance for Employment of State Residents
  - (i) A Valid and current Hawaii Compliant Express (HCE) Certificate of Vendor Compliance may be submitted in lieu of Items (c) through (e) above.
7. Bid samples or descriptive literature should not be submitted unless expressly requested and, regardless of any attempt by bidder to condition the bid, unsolicited bid samples or descriptive literature which are submitted at the bidder's risk will not be examined or tested, and will not be deemed to vary any of the provisions of the IFB.
  8. Bidder shall designate those portions of the offer that contain trade secrets or other proprietary data that are to remain confidential, subject to HAR 3-122-30(c) and (d); and that the material designated as confidential shall be realily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid.
  9. The bidder shall sign the bid form in ink and submit the bid form with the original signature included in the offer. If facsimile or other electronically transmitted bid offer is allowed, and the lowest responsive bid has been submitted accordingly, then the bidder must submit the complete original offer, with the original bid bond, if required, so that it is received within five working days from the notification of intent to award. If bidder fails to



comply with this requirement, the procurement officer may reject the facsimile or electronically submitted offer.

10. Receipt of the following addenda (if any) issued by the HHFDC is acknowledged by the date(s) of receipt indicated below:

Addendum No. 1 \_\_\_\_\_ Addendum No. 2 \_\_\_\_\_

Addendum No. 3 \_\_\_\_\_ Addendum No. 4 \_\_\_\_\_

It is understood that failure to receive any such Addendum shall not relieve the Bidder from any obligation of this Proposal.

OFFICIAL ADDRESS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FIRM NAME: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## WAGE CERTIFICATE

Project: Villages of Kapolei Landscape Maintenance

The undersigned bidder certifies that in performing the services required for the above project, the services will be performed under the following conditions:

- a. Pursuant to Section 103-55, Hawaii Revised Statutes, the services to be rendered shall be performed by employees paid at wages or salaries not less than wages paid to the public officers and employees of similar work.
- b. Pursuant to Section 103-55.5, Hawaii Revised Statutes:
  - i. Individuals engaging in the performance of the contract on the job site shall be paid:
    - a) Not less than the wages that the director of labor and industrial relations shall have determined to be prevailing for corresponding classes of laborers and mechanics employed on public works projects, in accordance with Chapter 104, Hawaii Revised Statutes, Wages and Hours of Employees on Public Works; and
    - b) Overtime compensation at one and one-half times the basic hourly rate plus fringe benefits for hours worked on Saturday, Sunday, or a legal holiday of the State or in excess of eight hours on any other day; and
  - ii. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety shall be fully complied with.

In accordance with the published Hourly Wage Rate Schedule, shall be obtained from the Department of Labor and Industrial Relations website <http://hawaii.gov/labor/rs/WRS/WRS.htm>

By: \_\_\_\_\_

Firm: \_\_\_\_\_

Date: \_\_\_\_\_

Failure to submit this form with the bid may be cause for rejection of the bid.

STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

# FORM OF NON-COLLUSIVE AFFIDAVIT

STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

\_\_\_\_\_, being first

**duly sworn deposes and says:**

That he is \_\_\_\_\_  
(a bidder, partner or officer)

of the firm of \_\_\_\_\_,  
the party making the foregoing proposal or bid; that such bid is genuine and not  
collusive or a sham; that said Bidder has not colluded, conspired, connived, or agreed,  
directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from  
bidding, and has not in any manner, directly or indirectly, sought by agreement or  
collusion, or communication or conference, with any person, to fix the bid price of affiant  
or any other bidder, or to fix any overhead, profit, or cost element of said bid price, or of  
that of any other bidder, or to secure any advantage against the State of Hawaii or any  
person interested in the proposed contract; and that all statements contained in said  
proposal or bid are true.

(Name of bidder if the bidder is an Individual)

(Name of partner if the bidder is a partnership)

(Name of officer if the bidder is a corporation)

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public, \_\_\_\_\_ Judicial Circuit, State of Hawaii

My commission expires \_\_\_\_\_, 20\_\_\_\_

FORM OF NON-GRATUITY AFFIDAVIT

Name of Project: \_\_\_\_\_

HHFDC Job No: \_\_\_\_\_

Contract No. \_\_\_\_\_

County of \_\_\_\_\_

Island of \_\_\_\_\_

The undersigned hereby certifies that he is the \_\_\_\_\_ of  
\_\_\_\_\_  
(Title)  
\_\_\_\_\_: that in connection with the  
(Name of Individual, Partnership, or Corporation)

aforesaid project, he or its officers, representatives, agents, subcontractors or employees has (have) not given or made any Agreement to give to any Hawaii Housing Finance and Development Corporation (HHFDC) employees, the employees' relatives or agents, any gift or money or any other gift; or gratuity in any form whatsoever; has (have) not loaned any money or anything of value to any HHFDC, the employees' relatives or agents; has (have) not rented or purchased any equipment, or any form thereof, or supplies of any nature whatsoever from any Hawaii Housing Finance and Development Corporation employees, the employees' relatives or agents.

\_\_\_\_\_  
Signature and typed name of:  
Bidder, if the bidder is an individual;  
Partner, if the bidder is a partnership;  
Officer, if the bidder is a corporation.

=====

STATE OF HAWAII	)	
	)	ss.
CITY AND COUNTY OF	)	

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_ Judicial  
Circuit, State of Hawaii  
My Commission Expires: \_\_\_\_\_



**STATE OF HAWAII**  
**CONTRACT FOR GOODS OR SERVICES**  
**BASED UPON**  
**COMPETITIVE SEALED BIDS**

This Contract, executed on the respective dates indicated below, is effective as of \_\_\_\_\_, \_\_\_\_\_, between Hawaii Housing Finance and Development Corporation,  
(Insert name of state department, agency, board or commission)  
State of Hawaii ("STATE"), by its Executive Director,  
(Insert title of person signing for State)  
(hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")),  
whose address is 677 Queen Street, Suite 300, Honolulu, Hawaii 96813  
and \_\_\_\_\_  
("CONTRACTOR"), a \_\_\_\_\_  
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)  
under the laws of the State of \_\_\_\_\_, whose business address and federal  
and state taxpayer identification numbers are as follows: \_\_\_\_\_

**RECITALS**

A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services, or both.

B. The STATE has issued an invitation for competitive sealed bids, and has received and reviewed bids submitted in response to the invitation.

C. The solicitation for bids and the selection of the CONTRACTOR were made in accordance with section 103D-302, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 5, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").

D. The CONTRACTOR has been identified as the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation.

E. Pursuant to Section 201H-4, Hawaii Revised Statutes, the STATE  
(Legal authority to enter into this Contract)  
is authorized to enter into this Contract.

F. Money is available to fund this Contract pursuant to:

(1) Section 201H-191, Hawaii Revised Statutes  
(Identify state sources)

or (2) Not Applicable  
(Identify federal sources)

or both, in the following amounts: State \$ \_\_\_\_\_  
Federal \$ \_\_\_\_\_ Not Applicable

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the Invitation for Bids number 15-001-K85-S ("IFB") and the CONTRACTOR'S accepted bid ("Bid"), both of which, even if not physically attached to this Contract, are made a part of this Contract.

2. Compensation. The CONTRACTOR shall be compensated for goods supplied or services performed, or both, under this Contract in a total amount not to exceed

\_\_\_\_\_ DOLLARS  
(\$ \_\_\_\_\_), including approved costs incurred and taxes, at the time and in the manner set forth in the IFB and CONTRACTOR'S Bid.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR is required to provide or is not required to provide: a performance bond, a payment bond, a performance and payment bond in the amount of Not Applicable DOLLARS (\$ \_\_\_\_\_).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Contract, including all attachments and addenda; (2) the IFB, including all attachments and addenda; and (3) the CONTRACTOR'S Bid.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of One Hundred Fity & 00/100 DOLLARS (\$ 150.00) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

## STATE

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Executive Director

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Date)

## CONTRACTOR

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

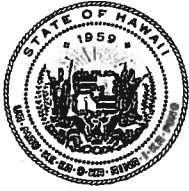
\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Date)

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

\* Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF Hawaii )  
 ) SS.  
City and COUNTY OF Honolulu )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ before me appeared  
\_\_\_\_\_ and \_\_\_\_\_, to me  
known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are  
\_\_\_\_\_ and \_\_\_\_\_ of  
\_\_\_\_\_, the  
CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said  
instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said  
instrument as the free act and deed of the CONTRACTOR.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit \_\_\_\_\_

Doc. Description: Contract for Goods and Services based

Upon Competitive Sealed Bids

\_\_\_\_\_  
Notary Signature Date

NOTARY CERTIFICATION





**STATE OF HAWAII**  
**CONTRACTOR'S**  
**STANDARDS OF CONDUCT DECLARATION**

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of \_\_\_\_\_, CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR is\* is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

\*Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

**CONTRACTOR**

By \_\_\_\_\_  
(Signature)

Print Name \_\_\_\_\_

Print Title \_\_\_\_\_

Name of Contractor \_\_\_\_\_

Date \_\_\_\_\_



**STATE OF HAWAII**  
**SCOPE OF SERVICES**

The CONTRACTOR shall provide services for landscape maintenance that will involve mowing, weeding, fertilizing, tree trimming, removal & disposal of debris, trash and cuttings, and shall also include the maintenance and repair of the irrigation system for all areas to be maintained.

These services are set forth in the Bidding Documents (Invitation For Bids No. 15-001-K85-S), which includes Technical Specifications, HHFDC General Conditions (11/01/02), State of Hawaii General Conditions (Form AG-008 Rev. 4/15/2009), and the CONTRACTOR's bid. The CONTRACTOR's bid shall include all bid items described in the Form of Bid, pages P-1 through P-12, as submitted by the CONTRACTOR.



STATE OF HAWAII

**COMPENSATION AND PAYMENT SCHEDULE**

- A. **COMPENSATION.** The CONTRACTOR shall be compensated for services performed under this Agreement in a total amount not to exceed \_\_\_\_\_ DOLLARS (\$), including the 4.712% State General Excise Tax, at the time and in the manner set forth in the Invitation for Bids and CONTRACTOR's bid.
- B. **PAYMENT.** Payment for work performed by the CONTRACTOR shall be made in accordance with paragraph 17 of the Supplemental General Conditions (AG-008 rev. 04/15/2009) and Article 8 of the HHFDC General Conditions.
- C. **EXTENDED PERIOD.** Compensation for services to be provided during any extended period authorized by a supplemental agreement at the HHFDC's sole discretion shall be based on the original base bid as submitted by CONTRACTOR. CONTRACTOR shall comply with applicable laws or rules relating to worker's compensation, unemployment compensation, payment of wages (including labor wage escalations), and safety. Compensation for services performed during any extended period authorized by HHFDC shall be paid in accordance with the prices set forth in CONTRACTOR's bid, as described in the Form of Bid pages P-1 to P-12 and submitted on the Bid Opening date.

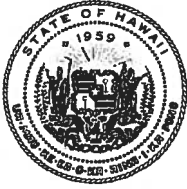


STATE OF HAWAII

**TIME OF PERFORMANCE**

- A. **NOTICE TO PROCEED.** The CONTRACTOR shall not commence any work under this Agreement prior to receipt from the STATE of a Notice to Proceed.
- B. **COMMENCEMENT OF THE WORK.** The CONTRACTOR shall commence work under this Agreement on the date indicated in the STATE's Notice to Proceed.
- C. **DURATION.** The time of completion for all the work described in the Form of Bid shall be within 730 calendar days after the date of commencement indicated in the Notice to Proceed. Any extension of time or implementation of the option period will require written approval of the STATE as stated in Paragraph 19 of the General Conditions (Form AG-008 Rev. 04/15/2009).
- D. **TERMINATION FOR CONVENIENCE.** The Contract may be terminated at any time pursuant to the Termination for Convenience clause set forth in paragraph 14 of the General Conditions of the Contract. The STATE shall give written notice of the termination to the CONTRACTOR at least thirty (30) days prior to the effective date of such termination.
- E. **TERM OF CONTRACT.** This is a multi-term contract solicitation that has been deemed to be in the best interest of the State by the Executive Director of the Hawaii Housing Finance and Development Corporation. The Contract is for the initial period of seven hundred thirty (730) calendar days. Unless terminated, the contract may be extended without the necessity of re-bidding, for not more than one (1) additional 24-month period or part thereof at HHFDC's sole discretion, at least sixty (60) days prior to expiration of the Contract. The Contract price for the extended period shall remain the same or lower than the initial bid price or as specified in the multi-term portion of the bid. Funds are available for only the initial term of the Contract, and the contractual obligation of both parties in each fiscal period succeeding the first initial term is subject to the appropriation and availability of funds to the HHFDC.

The Contract will be cancelled if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the initial term of the contract; however, this does not affect either the State's rights or the Contractor's rights under any termination clause of the Contract. In the event of cancellation, as provided in this paragraph, both parties will comply with §103D-315(c), HRS and §3-122-149(g), HAR.



## STATE OF HAWAII

**CERTIFICATE OF EXEMPTION  
FROM CIVIL SERVICE****1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development ("DHRD").\***

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

\_\_\_\_\_  
(Signature)\_\_\_\_\_  
(Date)\_\_\_\_\_  
(Print Name)\_\_\_\_\_  
(Print Title)

\* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
- (2) There is no employee-employer relationship; and
- (3) The authorized funding for the service is from other than the "A" or personal services cost element.

**NOTE:** Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§ 76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

**2. By the Director of DHRD, State of Hawaii.**

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, HRS.

\_\_\_\_\_  
(Signature)\_\_\_\_\_  
(Date)\_\_\_\_\_  
(Print Name)\_\_\_\_\_  
(Print Title, if designee of the Director of DHRD)



## STATE OF HAWAII SPECIAL CONDITIONS

This IFB is subject to the terms and conditions of the HHFDC General Conditions, as modified below:

1. In subarticle 1.47 of the HHFDC General Conditions, replace “Project Engineer” with “Project Coordinator”.
2. Subarticle 2.7 of the HHFDC General Conditions is deleted in its entirety and related references to this subarticle shall not apply to this Agreement.
3. Subarticle 2.9 of the HHFDC General Conditions is deleted in its entirety and related references to this subarticle shall not apply to this Agreement.
4. Subarticle 2.14.3 of the HHFDC General Conditions is deleted in its entirety and replaced with the following: A protest of an award or proposed award pursuant to 103D-302 or 103D-303, HRS, shall be submitted in writing to the Executive Director, within five (5) working days after the posting of the award of the Contract or, if requested, within five (5) working days after the debriefing is completed.

Award(s), if any, resulting from this solicitation shall be posted to the State Procurement Office (SPO) website at <http://hawaii.gov/spo>.

5. Subarticle 3.6 of the HHFDC General Conditions is deleted in its entirety and related references to this subarticle shall not apply to this Agreement.
6. Subarticle 3.7 of the HHFDC General Conditions is deleted in its entirety and related references to this subarticle shall not apply to this Agreement.
7. Subarticle 4.8 of the HHFDC General Conditions is deleted in its entirety and related references to this subarticle shall not apply to this Agreement.
8. In subarticle 5.6 of the HHFDC General Conditions, delete the word “constructed” in the first sentence and replace same with “operated, repaired, and maintained”.
9. Subarticles 5.6.5 through and including 5.6.5.10 are deleted and replaced with the following: “Drawings: Project drawings may be provided for the convenience of the contractor during the course of the operation and maintenance of the facility. The Project drawings may not be accurate and no compensation will be required or paid for errors and omissions inherent in the drawings. Consult project manuals and manufacturers’ representatives for equipment installed in the facility.”
10. Subarticles 5.8.2 and 5.8.3 of the HHFDC General Conditions are deleted and related references to these subarticles shall not apply to this Agreement.
11. Subarticles 5.9.3.1 through and including 5.9.3.4 of the HHFDC General Conditions are deleted and related references to these subarticles shall not apply to this Agreement.



## STATE OF HAWAII

### SPECIAL CONDITIONS

12. Subarticles 5.12 through and including 5.12.13.1 of the HHFDC General Conditions are deleted and related references to these subarticles shall not apply to this Agreement.
13. Subarticle 7.3.7.5 of the HHFDC General Conditions is deleted in its entirety and related references to this subarticle shall not apply to this Agreement.
14. In subarticle 7.7.2 of the HHFDC General Conditions, replace the entire paragraph with the following paragraph:

“The wage rate schedule is not physically enclosed in the bid documents. However, the wage rate schedule is incorporated herein by reference and made part of the Bid and Contract Documents. The bidder must obtain and use the latest minimum rates ten (10) days prior to the date set for the opening of bids. All applicable work pursuant to Chapter 104, HRS shall comply with the wage rate schedule. The wage rate schedule may be obtained from the Development Branch, HHFDC, 677 Queen Street, Suite 300, Honolulu, Hawaii or, Department of Labor and Industrial Relations website:  
<http://hawaii.gov/labor/rs/home/wages/72-2>.”
15. In Subarticle 7.26.1.4 of the HHFDC General Conditions, the total amount of liquidated damages shall be \$150.00 per day.
16. Subarticle 7.31.4 of the HHFDC General Conditions is deleted in its entirety and related references to this subarticle shall not apply to this Agreement.
17. Subarticles 7.33.1.4 through and including 7.33.1.8 of the HHFDC General Conditions are deleted and related references to this subarticle shall not apply to this Agreement.
18. Subarticle 7.34.1 of the HHFDC General Conditions is deleted in its entirety and related references to this subarticle shall not apply to this Agreement.
19. **INSURANCE.** The CONTRACTOR agrees to secure and maintain during all times that the CONTRACTOR is engaged in performing the CONTRACTOR's duties and obligations, pursuant to this Agreement the following insurance:
  - A. Commercial General Liability including but not limited to automobile liability or Comprehensive General Liability insurance for bodily injury and property damage liability covering all of the operations of the CONTRACTOR, including but not limited to automobile liability and contractual liability specifically covering liability assumed herein in forms satisfactory to the STATE and with limits of liability, which shall not be less than the following:

\$1,000,000	bodily injury or personal injury per occurrence;
\$1,000,000	automobile liability per accident;
\$1,000,000	property damage per occurrence;



**STATE OF HAWAII**  
**SPECIAL CONDITIONS**

\$2,000,000      combined single limit per  
                         occurrence; and  
\$2,000,000      yearly aggregate.

B. The CONTRACTOR shall furnish the STATE with certificates of such above-described insurance with the following endorsements noted thereon:

1) For Commercial General Liability or Comprehensive General Liability only:

(a) "Thirty (30) days prior written notice of cancellation, non-renewal or change in the policy shall be given to the STATE."

(b) "The STATE and the HHFDC shall be included by specific endorsements as additional insured parties."

(c) In the event of claims being made by one insured for which another insured is, or may be liable, the policy shall cover such insured against whom a claim is made or may be made in the manner as if separate policies had been issued to each hereunder.

(d) The policy shall be primary and any insurance carried by the STATE shall be excess, but only with respect to all operations of the insured. Any other insurance, which the STATE may have to insure loss, shall not contribute to a loss to which the insurance provided hereunder is applicable so long as such loss is due solely to all operations of the insured.

2) In the event of any reduction or exhaustion of the aggregate annual limits of liability, the CONTRACTOR shall immediately obtain additional insurance to replenish the limits of liability provided in this Agreement.

3) The CONTRACTOR shall immediately provide written notice to the STATE should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

**20. Employment of State Residents Requirements – HRS Chapter 103B.**

**A. Definitions**

1) "Contract" means contracts for construction under 103D, HRS.

2) "Contractor" has the same meaning as in Section 103D-104, HRS, provided that "contractor" includes a subcontractor where applicable.

3) "Construction" has the same meaning as in Section 103D-104, HRS.

4) "General Contractor" means any person having a construction contract with a governmental body.





## STATE OF HAWAII SPECIAL CONDITIONS

- 5) "Procurement Officer" has the same meaning as in Section 103D-104, HRS.
  - 6) "Resident" means a person who is physically present in the State of Hawaii at the time the person claims to have established the person's domicile in the State of Hawaii and shows the person's intent to make Hawaii the person's primary residence.
  - 7) "Shortage trade" means a construction trade in which there is a shortage of Hawaii residents qualified to work in the trade as determined by the Department of Labor and Industrial Relations.
- B. A Contractor awarded a contract shall ensure that Hawaii residents comprise not less than 80% of the workforce employed to perform the contract work on the project. The 80% requirement shall be determined by dividing the total number of hours worked on the contract by Hawaii residents, by the total number of hours worked on the contract by all employees of the Contractor in the performance of the contract. The hours worked by any Subcontractor of the Contractor shall count towards the calculation for this section. The hours worked by employees within shortage trades, as determined by the Department of Labor and Industrial Relations (DLIR), shall not be included in the calculation of this section.
- C. Prior to award of a contract, an Offeror/Bidder may withdraw an offer/bid without penalty if the Offeror/Bidder finds that it is unable to comply with HRS, Chapter 103B.
- D. Prior to starting any construction work, the Contractor shall submit the subcontract dollar amount for each of its Subcontractors.
- E. The requirements of this section shall apply to any subcontract of \$50,000 or more in connection with the Contractor; that is, such Subcontractors must also ensure that Hawaii residents comprise not less than 80% of the Subcontractor's workforce used to perform the subcontract.
- F. The Contractor and any Subcontractor whose subcontract is \$50,000 or more shall comply with the requirements of HRS Chapter 103B.
- 1) Certification of compliance shall be made in writing under oath by an officer of the General Contractor and applicable Subcontractors and submitted with the final payment request.
  - 2) The certification of compliance shall be made under oath by an officer of the company by completing a "Certification of Compliance for Employment of State Residents" form and executing the Certificate before a licensed notary public.
  - 3) In addition to the certification as indicated above, the Contractor and Subcontractors shall maintain records such as certified payrolls for laborers and mechanics who performed work at the site and time sheets for all other employees who performed



## STATE OF HAWAII

### SPECIAL CONDITIONS

work on the project. These records shall include the names, addresses and number of hours worked on the project by all employees of the Contractor and Subcontractor who performed work on the project to validate compliance with HRS Chapter 103B. The Contractor and Subcontractors shall retain these records and provide access to the State for a minimum period of four (4) years after the final payment, except that if any litigation, claim, negotiation, investigation, audit or other action involving the records has been started before the expiration of the four- year period, the Contractor and Subcontractors shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the four-year period, whichever occurs later. Furthermore, it shall be the Contractor's responsibility to enforce compliance with this provision by any Subcontractor.

G. A General Contractor or applicable subcontractor who fails to comply with this section shall be subject to sanctions as follows:

- 1) With respect to the General Contractor, withholding of payment on the contract until the Contractor or its Subcontractor complies with HRS Chapter 103B, or
- 2) Proceeding for debarment or suspension of the Contractor or Subcontractor under Section 103D-702, HRS.

H. Conflict with Federal Law – This section shall not apply if the application of this section is in conflict with any federal law, or if the application of this section will disqualify the State from receiving Federal funds or aid.

21. Apprenticeship Agreement Preference. Pursuant to HRS 103-55.6, if Contractor is awarded the Contract utilizing the apprenticeship preference, Contractor shall certify monthly, using a form provided by the State of Hawaii Department of Labor and Industrial Relations (DLIR), that work is being conducted on the project and that Contractor continues to be a participant in the relevant apprenticeship program for each trade it employs. The Monthly Report of Contractor's Participation (Form 2) is available for download on the DLIR website at: <http://labor.hawaii.gov/wdd/files/2012/12/Form-2-Monthly-Report-of-Contractors-Participation.pdf>.

#### 22. RESPONSIBILITY OF BIDDERS (§103D-310 HRS)

A. Pursuant to HRS Chapter 103D-310(c), the lowest responsive Bidder shall, at the time of award, be compliant with all laws governing entities doing business in the State, including, but not limited to:

- 1) Chapter 237, HRS, tax clearance;
- 2) Chapter 383, HRS, unemployment insurance;
- 3) Chapter 386, HRS, workers' compensation;
- 4) Chapter 392, HRS, temporary disability insurance;



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- 5) Chapter 393, HRS, prepaid health care; and
  - 6) Chapter 103D-310(c), HRS, Certificate of Good Standing (COGS) for entities doing business in the State.
- B. As proof of compliance, Bidders must furnish to the Hawaii Housing Finance and Development Corporation (HHFDC) a current and valid Certificate of Vendor Compliance from the Hawaii Compliance Express (HCE) system. The State shall verify compliance on HCE. If a Bidder is not compliant on HCE at the time of award, the Bidder will not receive the award.
- C. Hawaii Compliance Express. The HCE is an electronic system that allows vendors/contractors/service providers doing business with the State to quickly and easily demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the Department of Taxation, Federal Internal Revenue Service; Department of Labor and Industrial Relations, and Department of Commerce and Consumer Affairs. Bidders should register with HCE at <https://vendors.ehawaii.gov> prior to submitting an offer. The annual registration fee is \$12.00 and the 'Certificate of Vendor Compliance' is accepted as proof of compliance for award, execution of the contract, and final payment.
- D. Timely Registration on HCE. Bidders are advised to register on HCE soon as possible.
- E. Any Bidder making a false affirmation or certification under this subsection shall be suspended from further offerings or awards pursuant to section 103D-702, HRS. The procuring officer shall verify compliance with this subsection for all contracts awarded pursuant to HRS sections 103D-302, 103D-303, 103D-304, and 103D-306, and for contracts and procurements of \$2,500 or more awarded pursuant to section 103D-305, HRS.
23. In the event of a conflict between these Special Conditions, the HHFDC General Conditions and the General Conditions (AG-008), the documents shall control in the following priority:
- A. Special Conditions
  - B. General Conditions (AG-008)
  - C. HHFDC General Conditions

The foregoing notwithstanding, the provision, section, and/or document most advantageous to the State shall control. Said controlling provision, section and/or document shall be determined by HHFDC in its sole discretion.



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**24. CAMPAIGN CONTRBUTIONS BY STATE AND COUNTY CONTRACTORS PROHIBITED (11-355, HRS).** If awarded a contract in response to this solicitation, Bidder agrees to comply with Section 11-355, HRS, which states that campaign contributions are prohibited from a State and County Government contractor, during the term of the contract, if the contractor is paid with funds appropriated by the legislative body between the execution of the contract through the completion of the contract.

## GENERAL CONDITIONS

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## GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
  - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
  - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
  - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
  - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
  - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
  - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
- a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period



not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

### 13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
  - (A) Contract prices for goods or services accepted under the Contract;
  - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
  - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of

supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.

- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
  - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
  - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

- (A) Changes in the work within the scope of the Contract; and
  - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
- d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
  - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
  - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
  - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
  - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
  - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Contract or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
  - (1) Description of performance (Attachment 1);
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
  - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
  - (5) Method of shipment or packing of supplies; or
  - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
  - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
  - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
  - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:



- a. The cost or pricing data, and
- b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.

- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
  - (2) Driver's license number or Hawaii identification card number; or
  - (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
  - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
  - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
  - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or

- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

## HHFDC GENERAL CONDITIONS

# GENERAL CONDITIONS

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## **ARTICLE 1 - DEFINITIONS**

Whenever the following terms or pronouns are used in these Bidding and Execution of Contract Requirements, and General Conditions, or in any contract documents or instruments where these Bidding and Execution of Contract Requirements, and General Conditions govern, the intent and meaning shall be interpreted as follows:

1.01 **ADDENDUM** (plural - Addenda). A written or graphic document, including Drawings and Specifications, issued by the Executive Director during the bidding period which modifies or interprets the bidding documents, by additions, deletions, clarifications or corrections, which shall be considered and made a part of the bid proposal and the contract.

1.02 **ADDITION** (to the contract sum). Amount added to the contract sum by Change Order.

1.03 **ADMINISTRATIVE RULES**. Hawaii Administrative Rules for Chapter 103-D of the Hawaii Revised Statutes.

1.04 **ADVERTISEMENT**. A public announcement inviting bids for work to be performed or materials to be furnished.

1.05 **BAD WEATHER DAY**. When weather or other conditions prevent a minimum of four hours of work with the Contractor's normal work force on controlling items of work at the site. (See EXCESS BAD WEATHER DAY.)

1.06 **BENEFICIAL OCCUPANCY**. The point of project completion when the Department can use the constructed facility in whole or in part for its intended purpose even though substantial completion may not be achieved.

1.07 **BID**. See PROPOSAL.

1.09 **BID SECURITY**. The security furnished by the Bidder from which the Department may recover its damages in the event the Bidder breaches its promise to enter into a contract with the Department and fails to execute the required bonds covering the work contemplated, if its proposal is accepted.

1.10 **BIDDER**. Any individual, partnership, firm, corporation, joint venture, or other legal entity submitting, directly or through a duly authorized representative or agent, a proposal for the work contemplated.

1.11 **BIDDING DOCUMENTS**. The advertisement "Notice to Contractors", or invitation to bid, instructions to Bidders, proposal requirements, the bid form and the proposed Contract Documents including all addenda issued prior to receipt of Bids.

1.12 **BULLETIN**. A written notice to the Contractor requesting a price and / or time proposal for contemplated changes preparatory to the issuance of a field order or change order.

1.13 **BY OR TO THE PROJECT ENGINEER**. To avoid cumbersome and confusing repetition of expressions in these General Conditions, it is provided that whenever the following words or words of like import are used, they shall be understood as if they were followed by the words "by the Project Engineer" or "to the Project Engineer", unless the context clearly indicates

another meaning: contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected or condemned.

**1.14 CALENDAR DAY.** Any day shown on the calendar beginning at midnight and ending at midnight the following day. If no designation of calendar or working day is made, "day" shall mean calendar day.

**1.15 CHANGE ORDER.** A written order signed by the Executive Director that establishes the full payment and final settlement of all claims for direct, indirect and consequential costs, including costs of delays, and establishes any adjustments to contract time related to the work covered and affected by one or more field orders, or for change work done or agreed to be done without issuance of a separate field order. A change order signed by all the parties to the contract constitutes a supplemental agreement.

**1.16 COMPLETION.** See SUBSTANTIAL COMPLETION and FINAL COMPLETION.

**1.17 CONSULTANT.** A person, firm or corporation having a contract with the Department to furnish services with respect to the project.

**1.18 CONTRACT.** The written agreement between the Contractor and the Department by its Executive Director, by which the Contractor is bound to furnish all labor, equipment, and materials and to perform the specified work within the contract time stipulated, and by which HHFDC is obligated to compensate the Contractor therefor at the prices set forth therein. The contract shall include the Contract Documents and also any and all amendments and change orders which are required to complete the construction in an acceptable manner.

**1.19 CONTRACT COMPLETION DATE.** The calendar day on which all work on the project, required by the contract, must be completed. See CONTRACT TIME and FINAL COMPLETION.

**1.20 CONTRACT DOCUMENTS.** The Contract, Addenda (which pertain to the Contract Documents, Contractor's Proposal (including Wage Schedule, List of Subcontractors and other documentation accompanying the Bid and any post bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the contract, the Notice to Proceed, the Bonds, these General Conditions, the SPECIAL CONDITIONS, the Specifications and the Drawings as the same are more specifically identified in the contract together with all written Amendments, Change Orders, Field Orders, any written order for minor changes in the work and Project Engineer's written interpretations and clarifications issued on or after the effective date of the contract.

**1.21 CONTRACT PRICE.** The amount designated on the face of the contract for the performance of work including allowances, if any.

**1.22 CONTRACT TIME.** The number of working or calendar days provided in the contract for completion of the contract, exclusive of authorized time extensions. The number of days shall begin running on the effective date in the Notice to Proceed. If in lieu of providing a number of working or calendar days, the contract requires completion by a certain date, the work shall be completed by that date.

1.23 **CONTRACTOR.** Any individual, partnership, firm, corporation, joint venture, or other legal entity undertaking the execution of the work under the terms of the contract with the State of Hawaii, and acting directly or through its agents, or employees.

1.24 **DEPARTMENT.** The Department of Business Economic Development and Tourism, Hawaii Housing Finance and Development Corporation (abbreviated HHFDC).

1.25 **DRAWINGS (or Plans).** The contract drawings in graphic or pictorial form, which show the design, location, character, dimensions and details of the Work to be done and which shall be a part of the Contract Documents.

1.26 **EQUAL OR APPROVED EQUAL.** Whenever this term is used in the drawings or specifications, it shall be interpreted to mean a brand or article, prequalified in accordance with Section 6.3 **SUBSTITUTION OF MATERIALS AND EQUIPMENT AFTER BID OPENING**, that may be used in place of the one specified.

1.27 **EXCESS BAD WEATHER DAY.** A working day on which inclement weather prevents work on the contract and is beyond the average weather for the location of the project and the time of the year.

1.28 **EXECUTIVE DIRECTOR.** The Executive Director of the Hawaii Housing Finance and Development Corporation.

1.29 **FIELD ORDER.** A written order issued by the Project Engineer to the Contractor requiring the contract work to be performed in accordance with a change or changes in the work. A field order may (1) establish a price adjustment and/or time adjustment in an amount the Project Engineer believes is reasonable for the change; or (2) may declare that the Project Engineer does not intend to adjust contract time or price for the work; or (3) may request the Contractor to submit a proposal for an adjustment to the contract time and/or price by a certain date.

1.30 **FINAL COMPLETION.** The date set by the Executive Director that all work required by the contract and any amendments or changes thereto is in full compliance with the contract.

1.31 **FORCE ACCOUNT.** Term used when Work is ordered to be done at the sole option of the Department and is to be billed for at cost of labor, materials and equipment, insurances, taxes, etc., plus a percentage for overhead and profit.

1.32 **GUARANTEE.** Legally enforceable assurance of the duration of satisfactory performance of quality of a product or Work.

1.33 **HAZARDOUS MATERIALS.** Any and all radioactive materials, asbestos, polychlorinated biphenyls, petroleum, crude oil, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, toxic substances or materials cited in Hazardous Material Laws. Abandoned motor vehicles or parts thereof are not hazardous material.

1.34 **HHFDC.** Hawaii Housing Finance and Development Corporation.

- 1.35 **HOLIDAYS.** The days of each year which are set apart and established as State holidays pursuant to Chapter 8, Hawaii Revised Statutes.
- 1.36 **INSPECTOR.** The person assigned by the Department to make detailed inspections of contract performance and materials supplied for the work.
- 1.37 **LAWS.** All Federal, State, City and County Laws, ordinances, rules and regulations, and standard specifications, including any amendments thereto effective as of the date of the call for sealed bids.
- 1.38 **LIQUIDATED DAMAGES.** The amount prescribed in the Special Conditions, LIQUIDATED DAMAGES to be paid to the Department or to be deducted from any payments due or to become due the Contractor for each working day or calendar day (as applicable) delay in completing the whole or any specified portion of the work beyond the Contract Time.
- 1.39 **LETTER OF AWARD.** A written notice from the Executive Director to the successful Bidder(s) stating that its proposal has been accepted by the Department.
- 1.40 **MAJOR UNIT PRICE ITEM.** A unit price item which, when extended on its estimated quantities in the proposal form, exceeds five percent (5%) of the total base bid proposal less any allowance and contingent items included in the proposal.
- 1.41 **NON-CONFORMING WORK.** Work that does not meet the requirements of the Contract Documents.
- 1.42 **NOTICE TO BIDDERS/CONTRACTORS.** The advertisement for proposals for all work or materials on which bids are required. Such advertisement will indicate the location of the work to be done or the character of the material to be furnished and the time and place of the opening of proposals.
- 1.43 **NOTICE TO PROCEED.** A written notice from the Project Engineer to the Contractor advising it of the date on which it is to begin the prosecution of the Work, which date shall also be the beginning of Contract Time.
- 1.44 **POST CONTRACT DRAWINGS.** Drawings issued after the award of the contract for the purpose of clarification and / or changes to the work indicated in the original drawings and which may be made a part of the contract.
- 1.45 **PROJECT ACCEPTANCE DATE.** The calendar day on which the Project Engineer accepts the project as sufficiently completed in compliance with the contract so that the Department can occupy or utilize the Work for its intended use. See SUBSTANTIAL COMPLETION.
- 1.46 **PROJECT CONTRACT LIMITS (or CONTRACT ZONE).** The portion of the site as delineated on the drawings which define the Contractor's primary area of operation for the prosecution of the work. It does not define the exact limits of all construction that may be required under the contract.
- 1.47 **PROJECT ENGINEER.** The Department's Contract Administrator as described in Article 5 "CONTROL OF WORK".

1.48 **PROJECT GUARANTEE.** A guarantee issued by the Contractor to the Department. See GUARANTEE.

1.49 **PROPOSAL (BID).** The executed document submitted by a Bidder in the prescribed manner, in response to a request for proposals or invitation to Bid, to perform at the prices quoted, for the work specified under the contract, within the time prescribed for performance.

1.50 **PROPOSAL FORM.** The form prepared by the Department on which the written offer or formal bid for the work to be done is submitted by the Bidder. By submitting a bid on the proposal form, a Bidder adopts the language therein as its own.

1.51 **PUNCHLIST.** A list compiled by the Project Engineer (or Contractor) stating work yet to be completed or corrected by the Contractor in order to substantially complete or finally complete the contract requirements.

1.52 **QUESTIONNAIRE.** The specified forms on which the Bidder shall furnish required information as to its ability to perform and finance the work.

1.53 **SHOP DRAWINGS/SUBMITTALS.** All drawings, diagrams illustrations, schedules and other data or information which are prepared or assembled by the Contractor and submitted by Contractor to illustrate some portion of the Work.

1.54 **SPECIAL CONDITIONS.** The specific clauses that supplements or modify the standard clauses of the GENERAL CONDITIONS setting forth conditions or requirements peculiar to the individual project under consideration, which are not thoroughly or satisfactorily covered, described or explained in these GENERAL CONDITIONS.

1.55 **SPECIFICATIONS.** That portion of the Contract Documents consisting of written descriptions for materials, equipment, construction systems, standards, workmanship, directions, provisions and requirements that pertain to the method and manner of performing the work and certain administrative requirements applicable thereto.

1.56 **STATE.** The State of Hawaii acting through its authorized representative.

1.57 **SUBCONTRACT.** Any written agreement between the Contractor and its subcontractors which contains the conditions under which the subcontractor is to perform a portion of the work for the Contractor.

1.58 **SUBCONTRACTOR.** An individual, partnership, firm, corporation, joint venture or other legal entity, as covered in Chapter 444, Hawaii Revised Statutes, which enters into an agreement with the Contractor to perform a portion of the work for the Contractor.

1.59 **SUBSTANTIAL COMPLETION.** The status of the project when the Contractor has completed all the work and 1) all utilities and services are connected and working; 2) all equipment is in acceptable working condition; 3) additional activity by the Contractor to correct punchlist items as described herein will not prevent or disrupt use of the work or the facility in which the work is located; and 4) the building, structure, improvement or facility can be used for its intended purpose.

1.60 SUPERINTENDENT. The employee of the Contractor, authorized to receive and fulfill instructions from the Project Engineer, who is charged with the responsibility of all the Work.

1.61 SURETY. The qualified individual, firm or corporation other than the Contractor, which executes a bond with and for the Contractor to insure its acceptable performance of the contract.

1.62 UNUSUALLY SEVERE WEATHER. Uncommonly harsh weather including but not limited to hurricanes, tornadoes, tropical storms and tropical depressions—(See General Conditions, Section 7.21.8.6).

1.63 WORK. The furnishing of all labor, materials, equipment, and other incidentals necessary or convenient for the successful completion of the project and the execution of all the duties and obligations imposed by the contract.

1.64 WORKING DAY. A calendar day, exclusive of Saturdays, Sundays and State-recognized legal holidays for the month in question.

#### ABBREVIATIONS

HAR Hawaii Administrative Rules

HRS Hawaii Revised Statutes

VECP Value Engineering Cost Proposal

DOTAX State Department of Taxation

IRS Internal Revenue Service

END OF ARTICLE 1

## **BIDDING AND EXECUTION OF CONTRACT REQUIREMENTS**

### **ARTICLE 2 – PROPOSAL REQUIREMENTS AND CONDITIONS**

2.1 **QUALIFICATION OF BIDDERS** - Prospective Bidders must be capable of performing the work for which bids are invited, and must be capable of entering into a public contract of \$25,000 (twenty five thousand dollars) or more.

#### **2.1.1 NOTICE OF INTENTION TO BID**

2.1.1.1 In accordance with Section 103D-310, Hawaii Revised Statutes, and Section 3-122-108, Hawaii Administrative Rules, a written notice of intention to bid must be filed for the construction of any public building or public work when the bid is \$25,000 (twenty five thousand dollars) or more. A written notice of intention to bid need not be filed for the mere furnishing and installing of furniture, equipment, appliances, material and any combination of these items when a Contractor's license is not required under Chapter 444 of the Hawaii Revised Statutes, as amended, and the rules and regulations of the Contractor's License Board.

2.1.1.2 The written notice must be addressed to the Executive Director, who is the officer charged with letting the contract. The words, "INTENTION TO BID" must be clearly written or typed on the face of the envelope containing the written notice of intention to bid. The notice may be faxed, hand carried or mailed to the office indicated in the Notice to Contractors.

2.1.1.3 The written notice must be received by the office indicated in the Notice to Contractors no later than 2:00 p.m. on the 10th calendar day prior to the day designated for opening bids. If the 10th calendar day prior to the day designated for opening bids is a Saturday, Sunday, or legal State holiday, then the written notice must be received by the Department no later than 2:00 p.m. on the last working day immediately prior to said Saturday, Sunday, or legal State holiday. The written notice will be time stamped when received by said office. The time designated by the time stamping device in said office shall be official. If the written notice is hand carried, then the bearer is responsible to ensure that the notice is time stamped by said office. If the notice is faxed, the time of receipt by the Department fax machine shall be official.

2.1.1.4 It is the responsibility of the prospective Bidder to ensure that the written notice of intention to bid is received in time and the Department assumes no responsibility for failure of timely delivery caused by the prospective Bidder or by any method of conveyance chosen by the prospective Bidder.

2.1.1.5 If two (2) or more prospective Bidders desire to bid jointly as a joint venture on a single project, they must file an affidavit of joint venture with their notice of intention to bid. Such affidavit of joint venture will be valid only for the specific project for which it is filed. No further license is required when all parties to the joint venture possess current and appropriate contractor's licenses. Joint ventures are required to be licensed in accordance with Chapter 444 of the Hawaii Revised Statutes, as amended, and the rules and regulations of the Contractor's License Board when any party to the joint venture agreement does not hold a current or appropriate contractor's license. The joint venture must register with the office of the



Director of Commerce and Consumer Affairs in accordance with Chapter 425 of the Hawaii Revised Statutes, as amended.

2.1.1.6 No persons, firm or corporation may bid where (1) the person, firm, or corporation, or (2) a corporation owned substantially by the person, firm, or corporation, or (3) a substantial stockholder or an officer of the corporation, or (4) a partner or substantial investor in the firm is in arrears in any payment owed to the State of Hawaii or any of its political subdivisions or is in default of any obligation to the State of Hawaii or to all or to any of its political subdivisions, including default as a surety or failure to perform faithfully and diligently any previous contract with the Department.

2.1.1.7 The Executive Director may, in accordance with Section 103D-310 Hawaii Revised Statutes, require the prospective Bidder to submit answers to questions contained in the STANDARD QUALIFICATION QUESTIONNAIRE FOR PROSPECTIVE BIDDERS ON PUBLIC WORKS CONTRACTS, on the form provided by the Department, properly executed and notarized, setting forth a complete statement of the experience of such prospective Bidder and its organization in performing similar work and a statement of the equipment proposed to be used, together with adequate proof of the availability of such equipment, at least two (2) working days prior to the time advertised for the opening of bids. If the information in the questionnaire proves satisfactory, the Bidder's proposal will be received. All information contained in the answers to the questionnaire shall be kept confidential. The questionnaire will be returned to the Bidder after it has served its purpose.

2.1.1.8 If upon review of the Questionnaire, or otherwise, the Bidder appears not fully qualified or able to perform the intended work, the Executive Director shall, after affording the Bidder an opportunity to be heard and if still of the opinion that the Bidder is not fully qualified to perform the work, refuse to receive or to consider any bid offered by the prospective Bidder.

2.1.1.9 Failure to complete and submit the prequalification questionnaire by the designated deadline will be sufficient cause for the Department to disqualify a prospective Bidder.

## 2.1.2 TAX CLEARANCE (§103D-328 HRS)

2.1.2.1 Contractors are required to provide both state and federal tax clearances as a prerequisite to entering into a public contract of \$25,000 or more. To meet this requirement, all Bidders shall submit valid tax clearances with their bid proposals when the bid is \$25,000 or more. An additional tax clearance will be required before final payment can be made.

2.1.2.2 Tax clearances may be obtained by completing the Tax Clearance Application (Form A-6) and submitting it to the Hawaii State Department of Taxation (DOTAX) or the Internal Revenue Service (IRS). The application may be obtained from the DOTAX, the IRS, or the Public Works Division, Kalanimoku Building, Room 422, 1151 Punchbowl Street, Honolulu, Hawaii. The application may be mailed in or walked in to either the DOTAX or the IRS. Both tax agencies encourage the use of their mail-in process, which should be completed within twenty-one (21) calendar days. Tax clearance certificates will be issued to the applicant upon determination that the applicant has filed all tax returns due, and has paid all amounts owing on such returns, including penalty and interest.

2.1.2.3 Only original tax clearance certificates or certified copies will be accepted for this purpose. Failure to submit the required tax clearance certificates may be sufficient grounds for the Department to refuse to receive or consider the prospective Bidder's proposal.

2.1.2.4 Tax clearance certificates are valid for six (6) months. The six-month period will begin with the later approval date stamped on the tax clearance. An original copy of a tax clearance that bears an original green certified copy stamp will be accepted by the Department for final payment. The period of validity for final payment is forty-five (45) days.

2.1.2.5 The tax clearances submitted with the bid proposals must be valid on the solicitation's first legal advertisement date or any date thereafter up to the bid opening date. Valid tax clearances submitted with the proposal will remain valid for the contract award and encumbrance.

2.1.2.6 Any person, firm or corporation that is not presently doing business in the State of Hawaii and submits a Notice of Intention to Bid must submit along with said Notice of Intention to Bid a certified letter stating that said person, firm or corporation is not doing business in the State of Hawaii and is not in default of any obligations due to the State or any of its political subdivisions.

2.1.2.7 If a business cannot obtain a tax clearance certificate because of tax delinquencies, it may submit a "special letter" from DOTAX and/or the IRS. The "special letter" may only be obtained if (1) the business has an existing installment agreement with the tax agency, or (2) the delinquency is the subject of an administrative or judicial appeal. The Bidder is cautioned that the "special letter" from the IRS must be certified by DOTAX. All conditions applied to tax clearance certificates for this purpose are applicable to these "special letters". Instructions to obtain the "special letter" are available from each respective tax agency.

2.1.2.8 Various combinations of tax clearance certificates and "special letters" are acceptable for this purpose as follows:

- (a) Tax clearance certificate signed by both tax agencies;
- (b) Individual tax clearance certificates from each tax agency, respectively;
- (c) Tax clearance certificate from one tax agency and a "special letter" from the other tax agency;
- (d) "Special letters" from both tax agencies.

2.1.3 **WRONGFUL REFUSAL TO ACCEPT A BID** - In the event the Executive Director, for any reason, wrongfully refuses to accept what would otherwise be a responsive and responsible lowest bid, the exclusive remedy for such lowest Bidder shall be the recovery of the reasonable actual costs of preparing the bid. No other Bidder shall have any claim for damages. Refer to 2.14, PROTESTS.

## **2.2 INTERPRETATION OF QUANTITIES IN BID SCHEDULE**

2.2.1 When quantities for individual items of work are listed in the proposal form for which respective unit prices are asked, said quantities are estimated or approximate and are to be used by the Department only for the purpose of comparing on a uniform basis bids offered for the work. The Department does not, expressly or by implication agree that the actual quantity of work will correspond therewith.

2.2.2 After determining the low Bidder by comparison of bids submitted in accordance with the proposal form and Section 3.1, CONSIDERATION OF PROPOSALS; CANCELLATION in these Contract Documents, the quantities of unit price items of work may increase or decrease.

2.2.3 On unit price bids, payment will be made only for the actual number of units incorporated into the finished project at the unit price bid, subject to Section 4.7, VARIATIONS IN ESTIMATED QUANTITIES. It is understood and agreed that the Contractor shall make no claim for anticipated profit, loss of profit or unabsorbed field, branch or home office overhead and impact losses due to the exercise of the Departments right to eliminate entire portions of the work or to increase or decrease any or all the quantities shown in the proposal form.

## **2.3 CONTENTS OF PROPOSAL FORMS**

2.3.1 Prospective Bidders will be furnished with proposal forms giving the location, description, and the contract time of the work contemplated for which a lump sum bid price is asked or containing a schedule of items, together with estimated quantities of work to be performed and materials to be furnished, for which unit bid prices and/or lump sum bid prices are asked.

2.3.2 All papers bound with or attached to the proposal form shall be considered a part thereof and shall not be detached or altered when the proposal is submitted.

2.3.3 The drawings, specifications and other documents designated in the proposal form will also be considered a part thereof whether attached or not.

2.3.4 By submitting a bid on the proposal form, a Bidder accepts the language therein as its own.

## **2.4 BIDDER'S RESPONSIBILITY FOR EXAMINATION OF CONTRACT DOCUMENTS, SITE OF WORK, ETC.**

2.4.1 The Bidder shall carefully examine the project site contemplated all Contract Documents and any documents or items referenced therein and contract and bond forms therefore. The submission of a bid shall be considered as a warranty that the Bidder has made such examination and is informed of the conditions to be encountered in performing the Work and of the requirements of the Contract Documents and any documents and items referenced therein, and contract and bonds.

## **2.5 UTILITIES AND SERVICES**

2.5.1 Where its operations are next to or near properties of utility companies or other property, the Contractor shall not start work until the Contractor makes arrangements necessary for the protection of said property.

2.5.2 The Contractor shall cooperate, coordinate and schedule its work to suit the owners of underground or overhead utility lines or other property in removing or altering such lines or providing new services in order for the work to progress according to the contract. Cooperation includes rearranging the Contractor's operations and normal work schedules and realignment of work as approved by the Department in order to accommodate the operations and work of the utilities and/or other property in and around the work site at no additional cost to the Department.

2.5.3 The Contractor shall contact all the various utility companies before the start of the work to ascertain any existing utilities and to develop a full understanding of the utility requirements with respect to this project. The Contractor shall furnish the Project Engineer with evidence that the Contractor has contacted the utility companies.

2.5.4 If the Contractor discovers that the existence and location of utilities in the contract plans are not correct, the Contractor shall not disturb the utilities and immediately notify the Project Engineer. The Project Engineer will advise the Contractor regarding actions to take.

2.5.5 The Contractor shall ascertain the exact location and depth of utilities within the project area. The Contractor shall mark such locations to warn workers or equipment operators of their existence and location. The Contractor shall be responsible to acquaint personnel working near utilities with the type, size, location and depth of the utilities and the consequences that might result from disturbances. The Contractor shall not start trenching or start similar operations until the Contractor has taken reasonable and appropriate precautions to protect the utilities.

2.5.6 Any utilities or other property that the Contractor encounters during the progress of the work, such as telephone ducts, electric ducts, water lines, sewer lines, electric lines and drainage pipes, whether shown or not on the contract plans, shall not be disturbed or damaged unless otherwise instructed in the plans and specifications.

2.5.7 In the event the utilities or other property are damaged or disturbed by the Contractor, the Contractor shall be liable for all such damage where the utilities or other property are:

- a) Shown on the plan in its actual or approximate location; or
- b) Exposed on the job as it progresses; or
- c) Pointed out to the Contractor in the field.

2.5.8 Such utilities or other property as described above shall be "known utilities or other property." If the Contractor encounters an unknown utility or other property, it shall not proceed until it has notified the Project Engineer and receives instructions. If the Project Engineer directs additional work, it shall be paid for under Subsection 4.2, CHANGES.

2.5.9 The Contractor shall repair and restore to pre-damaged condition any utilities or any other property it may damage, and it shall be liable for any and all resulting damage at no cost to the Department, the work or utility owner or property owner. Any damage claim due to the disruption of service caused by the utilities being damaged shall be paid by the Contractor who shall defend, indemnify and hold harmless the Department from all suits, actions or claims of any character brought on account of such damages, whether or not the Department may have been partially at fault. Public liability and property damage insurance to be obtained by the Contractor pursuant to Article 7, "PROSECUTION AND PROGRESS" shall cover such risk of damage.

2.5.10 In the event the Contractor simultaneously with the discovery of an unknown utility or other property damages that utility or other property, the Contractor shall not be held liable beyond the extent of the Contractor's liability insurance but shall immediately notify the Project Engineer. Upon instruction from the Project Engineer, the Contractor shall repair all damages and execute a plan for dealing with the damaged utility or other property. This repair work shall be considered additional work as covered in Subsection 4.2, CHANGES.

## 2.6 ADDENDA AND BID CLARIFICATIONS

2.6.1 The terms and requirements of the bid documents (i.e. drawings, specifications and other bid and contract documents) cannot be changed prior to the bid opening except by a duly issued addendum.

2.6.2 The Department may alter, increase or decrease the scope of the work or the contract time, provisions and conditions by issuing a written addendum which sets forth such alterations, increase or decrease.

2.6.3 If a Bidder discovers what it considers to be a discrepancy, ambiguity, omission or doubt as to the meaning of drawings, specifications and any other bid or contract documents, the Bidder shall request in writing an interpretation from the Executive Director.

2.6.4 If the Department agrees that a discrepancy, ambiguity, omission or doubt exists, it shall issue a written addendum to the bid documents to all prospective Bidders at the respective offices furnished for such purposes eight (8) days before the bids are opened. The Department may extend the bid opening to allow at least eight (8) days from the notification date of the addendum. Upon notification by the Department, all Bidders/addressees shall be deemed to be on notice of the information therein whether or not the addendum is actually received. All addenda so issued shall become part of the contract documents.

2.6.5 No claim for additional compensation and/or time for performance will be allowed if the Contractor discovered, or in the exercise of reasonable care, should have discovered a discrepancy, ambiguity, omission or doubt for which an interpretation was not requested.

## 2.7 SUBSTITUTION OF MATERIALS AND EQUIPMENT BEFORE BID OPENING

2.7.1 Brand names of materials or equipment are specified or shown on the drawings to indicate a quality, style, appearance or performance and not to limit competition. The Bidder shall base its bid on one of the specified brand names unless alternate brands are qualified as equal or better in an addendum. Qualifications of such proposed alternate brands shall be submitted in writing and addressed to the Project Engineer. The face of the envelope

containing the request must be clearly marked "SUBSTITUTION REQUEST". The request may be hand carried or mailed to HHFDC, 677 Queen Street, Third Floor, Honolulu, Hawaii 96813. In either case, the written request must be received by HHFDC no later than fourteen (14) days before the bid opening date and time specified in the Notice to Bidders. The written request will be time stamped by HHFDC. For the purpose of this section, the time designated by the time stamping device in HHFDC shall be official. If the written request is hand carried, the bearer is responsible to ensure that the request is time stamped by HHFDC.

2.7.2 Submit three (3) sets of the written request, technical brochures, and a statement of variances. Refer to the Appendix for the Sample "Request for Substitution."

2.7.3 **STATEMENT OF VARIANCES.** The statement of variances must list all features of the proposed substitution which differ from the drawings, specifications and/or product(s) specified and must further certify that the substitution has no other variant features. The brochure and information submitted shall be clearly marked showing make, model, size, options, etc., and must include sufficient evidence to evaluate each feature listed as a variance. A request will be denied if submitted without sufficient evidence. If after installing the substituted product, an unlisted variance is discovered, Contractor shall immediately replace the product with a specified product at no cost to the Department.

2.7.4 **SUBSTITUTION DENIAL** - Any substitution request not complying with the above requirements will be denied. Substitution requests sent to other agencies and received by Project Engineer after the deadline above will be denied.

2.7.5 An addendum shall be issued to inform all prospective Bidders of any accepted substitution in accordance with Section 2.6, **ADDENDA AND BID CLARIFICATIONS.**

2.7.6 For substitutions of materials and equipment after issuance of the Letter of Award, refer to Section 6.3, **SUBSTITUTION OF MATERIALS AND EQUIPMENT AFTER BID OPENING.**

## 2.8 PREPARATION OF PROPOSAL

2.8.1 The Bidder's proposal must be submitted on the proposal form furnished by the Department. The proposal must be prepared in full accordance with the instructions thereon. The Bidder must state, both in words and numerals, the lump sum price or total sum bid at which the work contemplated is proposed to be done. These prices must be written in ink or typed. In case of a discrepancy between the prices written in words and those written in figures, the words shall govern over the figures. The Bidder shall sign the proposal in the spaces provided with ink. By submitting a bid, the Bidder adopts the language of the proposal as its own.

2.8.2 If the proposal is made by an individual, the person's name and post office address must be shown in the space provided. If made by a partnership the name and post office address of each member of the partnership must be shown and the proposal signed by all partners or evidence in the form of a partnership agreement must be submitted showing the authority of the partner to enter, on behalf of said partnership, into contract with the Department. If made by a corporation the proposal must show the name, title and business address of the president, secretary and treasurer and also evidence in the form of a corporate resolution must be submitted showing the authority of the particular corporate representative to enter on behalf of said corporation into contract with the Department. If made by a joint-venture the name and

post office address of each member of the individual firm, partnership or corporation comprising the joint-venture must be shown with other pertinent information required of individuals, partnerships or corporations as the case may be. The proposal must be signed by all parties to the joint-venture or evidence in the form of a Joint-Venture Agreement must be submitted showing the authority of the joint-venture's representative to enter on behalf of said joint-venture into contract with the Department.

2.8.3 Pursuant to the requirements of Section 103D-302, HRS, each Bidder shall include in its bid the name of each person or firm to be engaged by the Bidder on the project as joint contractor or subcontractor indicating also the nature and scope of work to be performed by such joint contractor and/or subcontractor and their respective contractor's license number. A joint contractor or subcontractor performing less than or equal to one percent of the total bid amount is not required to be listed in the proposal. The Bidder shall be solely responsible for verifying that their joint contractor or subcontractor has the proper license at the time of the submitted bid.

## 2.9 BID SECURITY

2.9.1 Subject to the exceptions in Section 3-122-223(d) HAR, all lump sum bids of \$25,000 (twenty five thousand dollars) and higher, or lump sum base bids including alternates of \$25,000 (twenty five thousand dollars) and higher, that are not accompanied by bid security are non-responsive. Bid security shall be one of the following: §3-122-222(a) HAR

2.9.1.1 Surety bid bond underwritten by a company licensed to issue bonds in this State which shall be substantially in the form of the Surety Bid Bond form in the Appendix; or

2.9.1.2 Legal Tender; or

2.9.1.3 Certificate of Deposit; credit union share certificate; or cashier's, treasurer's, teller's or official check drawn by, or a certified check accepted by, and payable on demand to the State by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(a) These instruments may be utilized only to a maximum of \$100,000 (one hundred thousand dollars).

(b) If the required security or bond amount totals over \$100,000 (one hundred thousand dollars), more than one instrument not exceeding \$100,000 (one hundred thousand dollars) each and issued by different financial institutions shall be accepted.

(c) CAUTION - Bidders are cautioned that certificates of deposit or share certificates with an early withdrawal penalty must have a face value sufficient to cover the maximum penalty amount in addition to the proposal guaranty requirement. If the certificate is made out to two names, the certificate must be assigned unconditionally to the Executive Director.

2.9.2 Unless otherwise stated, the bid security shall be in an amount equal to at least five percent (5%) of the lump sum bid or lump sum base bid including all additive alternates or in an amount required by the terms of the federal funding, where applicable.



2.9.3 If the Bidder is a corporation, evidence in the form of a corporate resolution, authorizing the corporate representative to execute the bond must be submitted with the proposal. (See sample in Appendix.) If the Bidder is a partnership, all partners must sign the bond or evidence in the form of a partnership agreement must be submitted showing the authority of the partner.

2.9.4 If the Bidder is a joint-venture, all parties to the joint-venture must sign the bond; provided, that one party to the joint-venture may sign on behalf of the joint-venture if evidence in the form of a joint-venture agreement or power of attorney, is submitted showing the authority of the signatory to sign the bond on behalf of the joint-venture.

2.9.5 In the case where the award will be made on a group or item basis, the amount of bid security shall be based on the total bid for all groups or items submitted.

2.9.6 Bidders are cautioned that surety bid bonds which place a limit in value to the difference between the bid amount and the next acceptable bid, such value not to exceed the purported amount of the bond, are not acceptable. Also, surety bid bonds which place a time limit on the right of the State to make claim other than allowed by statutes or these GENERAL CONDITIONS are not acceptable. Bidders are hereby notified that a surety bid bond containing such limitation(s) is not acceptable and a bid accompanied by such surety bid bond will be automatically rejected.

2.10 DELIVERY OF PROPOSALS - The entire proposal shall be placed together with the bid security, in a sealed envelope no smaller than 9-1/2" x 12" so marked as to indicate the identity of the project, the project number, the date of bid opening and the name and address of the Bidder and then delivered as indicated in the Notice to Contractors. Bids which do not comply with this requirement may not be considered. Proposals will be received up to the time fixed in the public notice for opening of bids and must be in the hands of the official by the time indicated. The words "SEALED BID" must be clearly written or typed on the face of the sealed envelope containing the proposal and bid security.

2.11 WITHDRAWAL OR REVISION OF PROPOSAL- Proposal may be modified prior to the deadline to submit the proposal by any of the following documents:

2.11.1 Withdrawal of Proposals:

2.11.1.1 A signed, written notice received in the office designated in the solicitation; or

2.11.1.2 A signed written notice faxed to the office designated in the solicitation.

2.11.2 Modification of Proposals:

2.11.2.1 A signed written notice received in the office designated in the solicitation, accompanied by a duly executed certificate of resolution for corporations, partnerships and joint-ventures, stating that a modification to the proposal is submitted; and

2.11.2.2 The actual modification sealed securely in a separate envelope or container, accompanying the written notice.



2.12 PUBLIC OPENING OF PROPOSALS - Proposals will be opened and read publicly at the time and place indicated in the Notice to Contractors. Bidders, their authorized agents and other interested parties are invited to be present.

2.13 DISQUALIFICATION OF BIDDERS - Any one or more of the following causes will be considered as sufficient for the disqualification of a Bidder and the rejection of its proposal or proposals:

2.13.1 Non-compliance with Section 2.1, QUALIFICATION OF BIDDERS;

2.13.2 Evidence of collusion among Bidders;

2.13.3 Lack of responsibility and cooperation as shown by past work such as failing to complete all of the requirements to close the project within a reasonable time or engaging in a pattern of unreasonable or frivolous claims for extra compensation;

2.13.4 Being in arrears on existing contracts with the State of Hawaii, or having defaulted on a previous contract with the State of Hawaii;

2.13.5 Lack of proper equipment and/or sufficient experience to perform the work contemplated, as revealed by the Standard Questionnaire and Financial Statement for Bidders;

2.13.6 No contractor's license or a contractor's license which does not cover type of work contemplated;

2.13.7 More than one proposal for the same work from an individual, firm, partnership, corporation or joint venture under the same or different name;

2.13.8 Delivery of bids after the deadline specified in the advertisement calling for bids;

2.13.9 Failure to pay, or satisfactorily settle, all bills overdue for labor and materials of former contracts in force at the time of issuance of proposal forms; and/or

2.13.10 Debarment or suspension pursuant to the provisions of Chapters 103D, 104 and 444, Hawaii Revised Statutes, as amended.

## 2.14 PROTESTS

2.14.1 Protests shall be adjudicated in accordance with §103D-701, HRS and as amended.

2.14.2 No Protest based upon the contents of the solicitation shall be considered unless it is submitted in writing to the Executive Director, prior to the date set for the receipt of proposals.

2.14.3 A protest of an award or proposed award pursuant to §103D-302 or §103D-303, HRS, shall be submitted in writing to the Executive Director, within five (5) working days after the posting of the award of the Contract.

2.14.4 When a protest is sustained and the protestor should have been awarded the contract under the solicitation but is not, then the exclusive remedy for such protestor shall be the recovery of the reasonable actual costs of preparing the bid, but not attorney's fees.

## END OF ARTICLE 2

## **ARTICLE 3 – AWARD AND EXECUTION OF CONTRACT**

3.1 **CONSIDERATION OF PROPOSALS: CANCELLATION** - After the proposals are opened and read, the figures will be extended and/or totaled in accordance with the bid prices of the acceptable proposals and the totals will be compared and the results of such comparison shall be made public. In the event of a tie bid, the low Bidder shall be determined by lot. In the comparison of bids, words written in the proposals will govern over figures and unit prices will govern over totals. Until the award of the contract, the Department may cancel the solicitation, reject any and all proposals in whole or part and may waive any defects or technicalities whenever such action is deemed to be in the best interest of the Department.

3.2 **IRREGULAR PROPOSALS** - Proposals will be considered irregular and may be rejected for the following reasons:

3.2.1 If the proposal is unsigned.

3.2.2 If bid security is not in accordance with Section 2.9, BID SECURITY.

3.2.3 If proposal is on a form other than that furnished by the Department; or if the form is altered or any part thereof detached.

3.2.4 If the proposal shows any non-compliance with applicable law, alteration of form, additions not called for, conditional bids, incomplete bids, non-initialed erasures, other defects, or if the prices are obviously unbalanced.

3.2.5 If the Bidder adds any provisions reserving the right to accept or reject an award.

3.2.6 If the Bidder adds any provisions reserving the right to enter into a contract pursuant to an award.

3.2.7 When a proposal is signed by an officer or officers of a corporation and a currently certified corporate resolution authorizing such signer(s) to submit such proposal is not submitted with the proposal or when the proposal is signed by an agent other than the officer or officers of a corporation or a member of a partnership and a power of attorney is not submitted with the proposal.

3.2.8 Where there is an incomplete or ambiguous listing of joint contractors and/or subcontractors the proposal may be rejected. All work which is not listed as being performed by joint contractors and/or subcontractors must be performed by the Bidder with its own employees. Additions to the list of joint contractors or subcontractors will not be allowed. Whenever there is a doubt as to the completeness of the list, the Bidder will be required to submit within five (5) working days, a written confirmation that the work in question will be performed with its own work force. Whenever there is more than one joint contractor and/or subcontractor listed for the same item of work, the Bidder will be required to either confirm in writing within five (5) working days that all joint contractors or subcontractors listed will actually be engaged on the project or obtain within five (5) working days written releases from those joint contractors and/or subcontractors who will not be engaged.

3.2.9 If in the opinion of the Executive Director, the Bidder and/or its listed subcontractors do not have the contractor's licenses or combination of contractor's licenses necessary to complete all of the work.

### 3.3 CORRECTION OF BIDS AND WITHDRAWAL OF BIDS (§3-122-31 HAR)

3.3.1 Corrections to bids after bid openings but prior to award may be made under the following conditions:

3.3.1.1 If the mistake is attributable to an arithmetical error, the Executive Director shall so correct the mistake. In case of error in extension of bid price, the unit price shall govern.

3.3.1.2 If the mistake is a minor informality which shall not affect price, quantity, quality, delivery, or contractual conditions, the Bidder shall request correction by submitting proof of evidentiary value which demonstrates that a mistake was made. The Executive Director shall prepare a written approval or denial in response to this request. Examples of such mistakes include:

- (a) Typographical errors;
- (b) Transposition errors;
- (c) Failure of a Bidder to sign the bid, but only if the unsigned bid is accompanied by other material indicating the Bidder's intent to be bound.

3.3.1.3 For reasons not allowable under paragraphs 3.3.1.1 and 3.3.1.2 when the Executive Director determines that the correction or waiver of an obvious mistake is in the best interest of the Department or is warranted for the fair treatment of other Bidders.

3.3.2 Withdrawal of bids after bid opening but prior to award may be made when the bid contains a mistake attributable to an obvious error which affects price, quantity, quality, delivery, or contractual conditions, and the Bidder requests withdrawal by submitting proof of evidentiary value which demonstrates that a mistake was made. The Executive Director shall prepare a written approval or denial in response to this request.

3.3.3 Correction or withdrawal of bids after award is not permissible except in response to a written withdrawal or correction request by the Contractor, and the Executive Director makes a written determination that the Department's procurement practices and policies would not be materially affected by such correction or withdrawal.

### 3.4 AWARD OF CONTRACT

3.4.1 The award of contract, if it be awarded, will be made within one hundred twenty (120) consecutive calendar days after the opening of the proposals to the lowest responsible and responsive Bidder (including the alternate or alternates which may be selected by the Executive Director in the case of alternate bids) whose proposal complies with all the requirements prescribed, but in no case will an award be made until all necessary investigations are made. The successful Bidder will be notified, by letter mailed to the address shown on the proposal, that its bid has been accepted and that it has been awarded the contract.

3.4.2 If the contract is not awarded within the one hundred twenty (120) days noted in paragraph 3.4.1 above, the Department may request the successful Bidder to extend the time for the acceptance of its bid. The Bidder may reject such a request without penalty; and in such case, the Department may at its sole discretion make a similar offer to the next lowest responsive and responsible Bidder and so on until a bid is duly accepted or until the Department elects to stop making such requests.

3.4.3 No contract will be awarded to any person or firm suspended or debarred under the provisions of Chapters 103D, 104 and Chapter 444, Hawaii Revised Statutes as amended.

3.4.4 The contract will be drawn on the forms furnished by the Executive Director. The contract will not be binding on the Department until all required signatures have been affixed thereto and written certification that funds are available for the work has been made.

3.5 CANCELLATION OF AWARD - The Department reserves the right to cancel the award of any contract at any time before the execution of said contract by all parties. The exclusive remedy to the awardee for such cancellation shall be payment of the reasonable bid preparation costs and the reimbursement of any direct expenses incurred as directed in the Notice of Award. Such cancellation will not incur any liability by the Department to any other Bidder.

3.6 RETURN OF BID SECURITY - All bid securities, except those of the four (4) lowest Bidders, will be returned following the opening and checking of the proposals. The retained bid securities of the four lowest Bidders will be returned within five (5) working days following the complete execution of the contract.

### 3.7 REQUIREMENT OF PERFORMANCE AND PAYMENT BONDS

3.7.1 Performance and Payment Bonds shall be required for contracts \$25,000 (twenty five thousand dollars) and higher. At the time of the execution of the contract, the successful Bidder shall file good and sufficient performance and payment bonds on the form furnished by the Department (see Appendix), each in an amount equal to one hundred percent (100%) of the amount of the contract price unless otherwise stated in the solicitation of bids. Acceptable performance and payment bonds shall be limited to the following:

3.7.1.2 Surety bonds underwritten by a company licensed to issue bonds in this State; or

3.7.1.3 A certificate of deposit; credit union share certificate; or cashier's, treasurer's, teller's or official check drawn by, or a certified check accepted by, and payable on demand to the Department by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

- (a) These instruments may be utilized only a maximum of \$100,000 (one hundred thousand dollars).
- (b) If the required security or bond amount totals over \$100,000 (one hundred thousand dollars), more than one instrument not exceeding \$100,000 (one hundred thousand dollars) each and issued by different financial institutions shall be acceptable.

3.7.2 If the Contractor fails to deliver the required performance and payment bonds, the Contractor's award shall be canceled, the Department shall have the remedies provided under Section 3.9, FAILURE TO EXECUTE THE CONTRACT and award of the contract shall be made to the next lowest responsible and responsive Bidder.

### 3.8 EXECUTION OF THE CONTRACT

3.8.1 The contract shall be signed by the successful Bidder and returned, together with satisfactory performance and payment bonds, within ten (10) calendar days after the Bidder is awarded the contract for execution or within such further time as the Executive Director may allow. No proposal or contract shall be considered binding upon the Department until the contract has been fully and properly executed by all parties thereto. For projects funded with State Capital Improvement Project (CIP) funds, the Executive Director shall also endorse thereon its certificate, as required by Section 103D-309, HRS, that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the Department's amount required by such contract.

3.8.2 On any individual award totaling less than \$25,000 (twenty five thousand dollars), the Department reserves the right to execute the contract by the issuance of a Purchase Order. Issuance of a Purchase Order shall result in a binding contract between the parties without further action by the Department. The issuance of a Purchase Order shall not be deemed a waiver of these General Conditions, and Contract Document requirements.

### 3.9 FAILURE TO EXECUTE THE CONTRACT

3.9.1 Before the Award - If a low Bidder without legal justification withdraws its bid after the opening of bids but before the award of the contract, the Department shall be entitled to retain as damages the amount established as bid security, and may take all appropriate actions to recover the damages sum from the property or third-party obligations deposited as bid security.

3.9.2 After the Award - If the Bidder to which a contract is awarded shall fail or neglect to enter into the contract and to furnish satisfactory security within ten (10) calendar days after such award or within such further time as the Executive Director may allow, the Department shall be entitled to recover from such Bidder its actual damages, including but not limited to the difference between the bid and the next lowest responsive bid, as well as personnel and administrative costs, consulting and legal fees and other expenses incurred in arranging a contract with the next low responsible and responsive Bidder or calling for new bids. The Department may apply all or part of the amount of the bid security to reduce its damages. If upon determination by the Department that the bid security exceeds the amount of its damages, it shall release or return the excess to the person who provided same.

3.9.3 Executive Director's Options - Upon a withdrawal of the lowest responsive bid, or upon a refusal or failure of the lowest Bidder to execute the contract, the Executive Director may thereupon award the contract to the next lowest responsible and responsive Bidder or may call for new bids, whichever method the Executive Director may deem to be in the best interests of the Department.

### 3.10 NOTICE TO PROCEED

3.10.1 After the contract is fully executed and signed by the Executive Director, the Contractor will be sent a formal Notice to Proceed letter advising the Contractor of the date on which it may proceed with the work. The Contractor shall be allowed ten (10) consecutive working days from said date to begin its work. In the event that the Contractor refuses or neglects to start the work, the Executive Director may terminate the contract in accordance with Section 7.27, TERMINATION OF CONTRACT FOR CAUSE.

3.10.2 The Contractor may commence its operations strictly at its own risk prior to receipt of the formal notice to proceed, provided it makes a written request and has received approval from the Executive Director in writing. All work performed shall be conducted in accordance with Section 7.1, PROSECUTION OF THE WORK.

3.10.3 In certain cases, the Department, with agreement of the Contractor, may issue a Notice to Proceed before full execution of the contract by the Executive Director and it may further issue a Notice to Proceed concurrently with the Notice of Award.

3.10.4 In the event the Notice to Proceed is not issued within one hundred eighty (180) days after 1) the date the contract is executed by all parties; or 2) for projects funded with State Capital Improvement Project (CIP) funds, the date that the written certificate that funds are available is issued, whichever is later, the Contractor may submit a claim for increased labor and material costs (but not overhead costs) which are directly attributable to the delay beyond the first one hundred eighty (180) days. Such claims shall be accompanied with the necessary documentation to justify the claim. No payment will be made for assumed escalation costs.

### 3.11 RELATIONSHIP OF PARTIES: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.

3.11.1 In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE's opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.

3.11.2 The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the STATE any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.

3.11.3 The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Contract,

for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.

3.11.4 The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.

3.11.5 The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 237-45, HRS, and paragraph 8.8 of these General Conditions.

3.11.6 The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

### 3.12 PERSONNEL REQUIREMENTS:

3.12.1 The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Contract.

3.12.2 The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

3.13 NONDISCRIMINATION - No person performing work under this Contract, including any subcontractor, employee, or agent of the Contractor, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

3.14 CONFLICTS OF INTEREST - The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Contract.

END OF ARTICLE 3



## ARTICLE 4 - SCOPE OF WORK

4.1 INTENT OF CONTRACT, DUTY OF CONTRACTOR - The intent of the Contract is to provide for the construction, complete in every detail, of the work described at the accepted bid price and within the time established by the contract. The Contractor has the duty to furnish all labor, materials, equipment, tools, transportation, incidentals and supplies and to determine the means, methods and schedules required to complete the work in accordance with the drawings, specifications and terms of the contract.

4.1.1 ENTIRE CONTRACT - This Contract sets forth all of the Contract, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior Contracts, conditions, understandings, promises, warranties and representations, which shall have no further force or effect. There are no Contracts, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.

4.2 CHANGES - The Project Engineer may at any time, during the progress of the work, by written order, and without notice to the sureties, make changes in the work as may be found to be necessary or desirable. Such changes shall not invalidate the Contract nor release the Surety, and the Contractor will perform the work as changed, as though it had been a part of the original Contract.

4.2.1 MINOR CHANGES - Minor changes in the work may be directed by the Project Engineer with no change in contract price or time of performance. Minor changes are consistent with the intent of the Contract Documents and do not substantially alter the type of work to be performed or involve any adjustment to the contract sum or extension of the contract time.

4.2.2 Oral Orders

4.2.2.1 Any oral order, direction, instruction, interpretation or determination from the Executive Director or any other person which in the opinion of the Contractor causes any change, shall be considered as a change only if the Contractor gives the Executive Director written notice of its intent to treat such oral order, direction, instruction, interpretation or determination as a change directive. Such written notice must be delivered to both the Executive Director and the Project Engineer before the Contractor acts in conformity with the oral order, direction, instruction, interpretation or determination, but not more than five (5) days after delivery of the oral order to the Contractor. The written notice shall state the date, circumstances, whether a time extension will be requested, and source of the order that the Contractor regards as a change. Such written notice may not be waived and shall be a condition precedent to the filing of any claim by the Contractor. Unless the Contractor acts in accordance with this procedure, any such oral order shall not be treated as a change for which the Contractor may make a claim for an increase in the contract time or contract price related to such work.

4.2.2.2 No more than five (5) days after receipt of the written notice from the Contractor, a Field Order shall be issued for the subject work if the Department agrees that it constitutes a change. If no Field Order is issued in the time established, it shall be deemed a rejection of Contractor's claim for a change. If the Contractor objects to the failure to issue a Field Order, it

shall file a written protest with the Executive Director within thirty (30) days after delivery to the Executive Director of the Contractor's written notice of its intention to treat the oral order as a change. In all cases, the Contractor shall proceed with the work. The protest shall be determined as provided in Section 7.25, DISPUTES AND CLAIMS.

**4.2.3 FIELD ORDERS** - All changes will be set forth in a field order or change order. Upon receipt of a field order, the Contractor shall proceed with the changes as ordered. If the Contractor does not agree with any of the terms or conditions or in the adjustment or non-adjustment to the contract time and/or contract price set forth therein, it shall file with the Executive Director a written protest setting forth its reasons in detail within thirty (30) days after receipt of the field order. In all cases, the Contractor shall proceed with the work as changed. The protest shall be determined as provided in Subsection 7.25, DISPUTES AND CLAIMS. Failure to file such a protest within the time specified shall constitute agreement on the part of the Contractor with the terms, conditions, amounts and adjustments or non-adjustment to the contract price and/or contract time set forth in the field order.

#### **4.2.4 CHANGE ORDERS**

**4.2.4.1** The Department will issue sequentially numbered change orders at times it deems appropriate during the contract period. A change order may contain the adjustment in contract price and / or time for a number of Field Orders. The change order will be issued in the format attached (refer to the Appendix). No payment for any change will be made until the change order is issued.

**4.2.4.2** The penal sum of the Surety Performance and Payment Bonds will be adjusted by the amount of each and every change order.

#### **4.3 DUTY OF CONTRACTOR TO PROVIDE PROPOSAL FOR CHANGES**

**4.3.1** A Field Order may request the Contractor to supply the Department with a proposal for an adjustment to the contract time or contract price for the work described therein. Any such request for a proposal shall not affect the duty of the Contractor to proceed as ordered with the work described in the Field Order.

**4.3.2** The Project Engineer from time to time may issue a Bulletin to the Contractor requesting price and / or time adjustment proposals for contemplated changes in the work. A Bulletin is not a directive for the Contractor to perform the work described therein.

**4.3.3** Within seven (7) days after receipt of a Bulletin or Field Order containing a request for proposal, the Contractor shall submit to the Project Engineer a detailed written statement in a format similar to the one shown in the Appendix setting forth all charges the Contractor proposes for the change and the proposed adjustment of the contract time, all properly itemized and supported by sufficient substantiating data to permit evaluation. No time extension will be granted for delays caused by late Contractor pricing of changes or proposed changes. If the project is delayed because Contractor failed to submit the cost proposal within the seven (7) days, or longer as allowed by the Project Engineer, liquidated damages will be assessed in accordance with Section 7.26, FAILURE TO COMPLETE THE WORK ON TIME.

4.3.4 No payment shall be allowed to the Contractor for pricing or negotiating proposed or actual changes. No time extension will be granted for delay caused by late Contractor pricing of changes or proposed changes.

4.3.5 The Executive Director may accept the entire proposal, or any discreet cost item contained within the proposal or the proposed adjustment to contract time by a notice in writing to the Contractor delivered to the Contractor within thirty (30) days after receipt of the proposal. The written acceptance by the Executive Director of all or part of the Contractor's proposal shall create a binding agreement between the parties for that aspect of the change.

4.3.6 If the Department refuses to accept the Contractor's entire proposal, the Executive Director may issue a Field Order for the work; or if a Field Order has already been issued, the Department may issue a supplemental Field Order establishing the remaining adjustments to contract price and/or contract time for the ordered changes. If the Contractor disagrees with any term, condition or adjustment contained in such Field Order or supplemental Field Order, it shall follow the protest procedures set forth in and be subject to the other terms of Subsection 4.2.3, FIELD ORDERS.

#### 4.4 PRICE ADJUSTMENT (§3-125-13 HAR)

4.4.1 Any adjustment in the contract price pursuant to a change or claim in this contract shall be made in one or more of the following ways:

4.4.1.1 By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

4.4.1.2 By unit prices specified in the contract or subsequently agreed upon;

4.4.1.3 Whenever there is a variation in quantity for any work covered by any line item in the schedule of costs submitted as required by Section 7.2, COMMENCEMENT REQUIREMENTS, by the Department at its discretion, adjusting the lump sum price proportionately;

4.4.1.4 In such other manner as the parties may mutually agree;

4.4.1.5 At the sole option of the Project Engineer, by the costs attributable to the event or situation covered by the change, plus appropriate profit or fee, all as specified in Section 4.5, ALLOWANCES FOR OVERHEAD AND PROFIT and the force account provision of Section 8.3, PAYMENT FOR ADDITIONAL WORK; or

4.4.1.6 In the absence of an agreement between the two parties, by a unilateral determination by the Department of the reasonable and necessary costs attributable to the event or situation covered by the change, plus appropriate profit or fee, all as computed in accordance with applicable sections of Chapters 3-123 and 3-126 of the Hawaii Administrative Rules and Regulations, and Section 4.5, ALLOWANCES FOR OVERHEAD AND PROFIT.

#### 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT (§3-125-13 HAR)

4.5.1 In determining the cost or credit to the Department resulting from a change, the allowances for all overhead, including, extended overhead resulting from adjustments to

contract time (including home office, branch office and field overhead, and related delay impact costs) and profit combined, shall not exceed the percentages set forth below:

4.5.1.1 For the Contractor, for any work performed by its own labor forces, fifteen percent (15%) of the direct cost;

4.5.1.2 For each subcontractor involved, for any work performed by its own forces, fifteen percent (15%) of the direct cost;

4.5.1.3 For the Contractor or any subcontractor, for work performed by their subcontractors, seven percent (7%) of the amount due the performing subcontractor.

4.5.1.4 Field overhead includes, but is not limited to all costs of supervision, engineering, clerical, layout, temporary facilities, improvements and structures, all general condition expenditures, storage, transport and travel, housing, small tools (as defined in 8.3.4.5(h), pickup trucks and automobiles.

4.5.2 Not more than three markup allowance line item additions not exceeding the maximum percentage shown above will be allowed for profit and overhead, regardless of the number of tier subcontractors.

4.5.3 The allowance percentages will be applied to all credits and to the net increase of direct costs where work is added and deleted by the changes.

#### 4.6 PAYMENT FOR DELETED MATERIAL

4.6.1 Canceled Orders - If acceptable material was ordered by the Contractor for any item deleted by an ordered change in the work prior to the date of notification of such deletion by the Project Engineer, the Contractor shall use its best efforts to cancel the order. The Department shall pay reasonable cancellation charges required by the supplier excluding any markup for overhead and profit to the Contractor.

4.6.2 RETURNED MATERIALS - If acceptable deleted material is in the possession of the Contractor or is ultimately received by the Contractor, if such material is returnable to the supplier and the Project Engineer so directs, the material shall be returned and the Contractor will be paid for the reasonable charges made by the supplier for the return of the material, excluding any markup for overhead and profit to the Contractor. The cost to the Contractor for handling the returned material will be paid for as provided in Section 4.4, PRICE ADJUSTMENT.

4.6.3 UNCANCELLED MATERIALS - If orders for acceptable deleted material cannot be canceled at a reasonable cost, it will be paid for at the actual cost to the Contractor including an appropriate markup for overhead and profit as set forth in Section 4.5, ALLOWANCES FOR OVERHEAD AND PROFIT. In such case, the material paid for shall become the property of the Department and the cost of further storage and handling shall be paid for as provided in Section 4.4, PRICE ADJUSTMENT.

#### **4.7 VARIATIONS IN ESTIMATED QUANTITIES (§3-125-10 HAR)**

4.7.1 Where the quantity of a major unit price item in this contract is estimated on the proposal form and where the actual quantity of such pay item varies more than fifteen percent (15%) above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity. The adjustment shall be subject to Section 4.4 PRICE ADJUSTMENT and Section 4.5, ALLOWANCES FOR OVERHEAD AND PROFIT. If the quantity variation is such as to cause an increase in the time necessary for completion, the Executive Director shall, upon receipt of a written request for an extension of time within thirty (30) days of the item's completion, ascertain the facts and make such adjustment to the completion date as the Executive Director finds justified.

4.8 **VARIATIONS IN BOTTOM ELEVATIONS** - The Contractor shall plan and construct to the bottom elevations of footings, piles, drilled shafts, or cofferdams as shown on the drawings. When the bottom of a footing, pile, drilled shaft, or cofferdam is shown as an estimated or approximate elevation, the Contractor shall plan and construct to that elevation or to any deeper elevation required by the drawings or direction of the Project Engineer. In the event the bottom elevation is lowered, the Contractor shall be entitled to additional payment in accordance with Sections 4.4 PRICE ADJUSTMENT and 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT. In the event the bottom elevation is raised, the Department shall be entitled to a credit in accordance with Sections 4.2 CHANGES, 4.4, PRICE ADJUSTMENT and 4.5, ALLOWANCES FOR OVERHEAD AND PROFIT.

#### **4.9 DIFFERING SITE CONDITIONS (§3-125-11 HAR)**

4.9.1 During the progress of the work, if the Contractor encounters conditions at the site differing materially from those shown in the drawings and specifications, Contractor shall promptly, and before any such conditions are disturbed or damaged (except in an emergency as required by subsection 7.17.8), notify the Project Engineer in writing of:

4.9.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the contract; or

4.9.1.2 Unknown physical conditions at the site, of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract. Unclaimed motor vehicles or parts thereof and discarded materials or unclaimed items are not unknown or unforeseen physical conditions. (See also Section 5.8, EXAMINATION OF DRAWINGS, SPECIFICATIONS, PROJECT SITE)

4.9.2 After receipt of written notice, the Executive Director shall promptly investigate the site, and if it is found that such conditions do materially differ and cause an increase in the Contractor's cost of, or the time required to, perform any part of the Work, whether or not changed as a result of such conditions, an adjustment shall be made and the contract modified accordingly. Any adjustment in contract price made pursuant to this Section 4.9 shall be determined in accordance with Sections 4.4, PRICE ADJUSTMENT and 7.25, DISPUTES AND CLAIMS.

4.9.3 Nothing contained in this Section 4.9 shall be grounds for an adjustment in compensation if the Contractor had actual knowledge or should have known of the existence of such conditions prior to the submission of bids.

4.10 **COSTS AND EXPENSES** - Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles) of the Procurement Rules and the following guidelines:

4.10.1 Reimbursement for air transportation shall be actual cost or coach class air fare, whichever is less.

4.10.2 Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.

4.10.3 Unless prior written approval of the EXECUTIVE DIRECTOR is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for interisland or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

#### END OF ARTICLE 4

## **ARTICLE 5 - CONTROL OF WORK**

### **5.1 AUTHORITY OF THE EXECUTIVE DIRECTOR**

5.1.1. **AUTHORITY OF THE EXECUTIVE DIRECTOR** - The Executive Director shall make final and conclusive decisions on all questions which may arise relating to the quality and acceptability of the materials furnished and work performed, the manner of performance and the rate of progress of the work, the interpretation of the plans and specifications, the acceptable fulfillment of the contract on the part of the Contractor, the compensation under the contract and the mutual rights of the parties to the contract. The Executive Director shall have the authority to enforce and make effective such decisions and orders at the Contractor's expense when the Contractor fails to carry such decisions and orders out promptly and diligently. The Executive Director shall have the authority to suspend the work wholly or in part as provided in Subsection 7.24, SUSPENSION OF WORK.

### **5.2 AUTHORITY OF THE PROJECT ENGINEER**

5.2.1 The Project Engineer has the authority to act on behalf of the Department on all matters regarding the contract and the work that are not reserved for the Executive Director. The Project Engineer's authority is vested exclusively in the Project Engineer except when specific authority to act for the Project Engineer has been delegated to a specific person or persons. Such delegation of authority may be established by the Contract Documents; otherwise, it is not effective or binding upon the Department until such written notification of the delegation is received by the Contractor.

### **5.3 AUTHORITY OF THE INSPECTOR**

5.3.1 The Inspector shall observe and inspect the contract performance and materials. The Inspector does not have any authority vested in the Project Engineer unless specifically delegated in writing.

5.3.2 The Inspector may offer advice and recommendations to the Contractor, but any such advice or recommendations are not directives from the Project Engineer.

5.3.3 The Inspector has no authority to allow deviations from the Contract Documents and may reject any and all work that the Inspector deems is not in conformity with the contract requirements. Failure of an Inspector at any time to reject non-conforming work shall not be considered a waiver of the Department's right to require work in strict conformity with the Contract Documents as a condition of final acceptance.

5.4 **AUTHORITY OF CONSULTANT(S)** - The Department may engage Consultant(s) for limited or full observation to supplement the inspections performed by the Department and respective Counties. Unless otherwise specified in writing to the Contractor, such retained Consultant(s) will have the authority of an Inspector.



## 5.5 SHOP DRAWINGS AND OTHER SUBMITTALS

5.5.1 The following documents shall be submitted where required by the Contract Documents:

### 5.5.1.1 Shop Drawing

- (1) The Contractor shall prepare, thoroughly check, and approve all shop drawings, including those prepared by subcontractors or any other persons. The Contractor shall indicate its approval by stamping and signing each drawing. Any shop drawing submitted without being reviewed, stamped and signed will be considered as not having been submitted, and any delay caused thereby shall be the Contractor's responsibility.
- (2) Shop drawings shall indicate in detail all parts of an item of work, including erection and setting instructions and engagements with work of other trades or other separate contractors. Shop drawings for structural steel, millwork and pre-cast concrete shall consist of calculations, fabrication details, erection drawings and other working drawings to show the details, dimensions, sizes of members, anchor bolt plans, insert locations and other information for the complete fabrication and erection of the structure to be constructed.
- (3) The Contractor shall be responsible for the design of all structural curtain walls, all connections and fasteners for structural steel and architectural and structural precast concrete. Curtain walls, connections and fasteners shall be designed by a licensed professional engineer to carry the indicated or necessary loads. The precast concrete pieces shall be designed to withstand erection, transportation and final loading stresses. All calculations shall be performed by a licensed professional engineer and submitted to the Project Engineer for review.
- (4) The cost of shop drawings or any other submittal shall not be a separate or individual pay item. All costs of furnishing shop drawings required by the contract shall be included in the price agreed to be paid for the various contract items of work, and no additional allowances will be made therefor.
- (5) All shop drawings as required by the contract, or as determined by the Project Engineer to be necessary to illustrate details of the Work shall be submitted to the Project Engineer with such promptness as to cause no delay in the work or in that of any other Contractor. Delay caused by the failure of the Contractor to submit shop drawings on a timely basis to allow for review, possible resubmittal and acceptance will not be considered as a justifiable reason for a contract time extension. Contractor, at its own risk, may proceed with the work affected by the shop drawings before receiving acceptance; however the Department shall not be liable for any costs or time required for the correction of work done without the benefit of accepted shop drawings.
- (6) It is the Contractor's obligation and responsibility to check all of its and its subcontractor's shop drawings and be fully responsible for them and for coordination with connecting and other related work. The Contractor shall prepare, and submit to the Project Engineer coordination drawings showing the installation locations of all plumbing, piping, duct and electrical work including equipment throughout the project. By



approving and submitting shop drawings, the Contractor thereby represents that it has determined and verified all field measurements and field construction criteria, or will do so, and that it has checked and coordinated each shop drawing with the requirements of the work and the contract documents. When shop drawings are prepared and processed before field measurements and field construction criteria can be or have been determined or verified, the Contractor shall make all necessary adjustments in the work or resubmit further shop drawings, all at no change in contract price or time.

**5.5.1.2 SHOP DRAWING FORM** - Each drawing and/or series of drawings submitted must be accompanied by a letter of transmittal giving a list of the titles and number of the drawings. Each series shall be numbered consecutively for ready reference and each drawing shall be marked with the following information:

- (1) Date of Submission
- (2) Name of Project
- (3) Project Number
- (4) Location of Project
- (5) Name of submitting Contractor and Subcontractor
- (6) Revision Number
- (7) Specification and/or any drawing reference by article or sheet number.

**5.5.1.3** No shop drawing shall be smaller than 24" x 36" nor larger than 28" x 42". At the determination of the Project Engineer, each sheet of drawings for the submittal shall consist of either (1) reproducible transparency and three ozalid prints; or (2) six ozalid prints

**5.5.1.4** The Department will not be responsible for any cost of modifying/adjusting precast structures to fit the final as-built design, actual field conditions and finished work. To this end, the Contractor shall follow the following procedures:

- (a) Submit shop drawings for general design conformity for approval. Delay precasting operations.
- (b) Start infrastructure work. Expose, check grade and install improvements requiring precast structures. Resubmit shop drawings with schedule for all structures indicating required deviations, correct and final inverts, depths, openings, special reinforcing and details, alignments, correct configurations, tops, grating, etc. The Contractor shall submit a schedule for the precasting work. Precast operations may commence based on approved shop drawings. During precast operations, the Project Engineer may inspect the operations at least once per differing group of structures. The Contractor shall assume all risks and costs associated with modifying/adjusting the precast structures due to incomplete field verification, premature analysis and shop drawings.

**5.5.1.5 DESCRIPTIVE SHEETS AND OTHER SUBMITTALS** - When a submittal is required by the contract, the Contractor shall submit to the Project Engineer eight (8) complete

sets of descriptive sheets such as brochures, catalogs, illustrations, etc., which will completely describe the material, product, equipment, furniture or appliances to be used in the project as shown in the drawings and specifications. Prior to the submittal, the Contractor will review and check all descriptive sheets for conformity to the contract requirements and indicate such conformity by marking or stamping and signing each sheet. It is the responsibility of the Contractor to submit descriptive sheets for review and acceptance by the Project Engineer as required at the earliest possible date after the date of award in order to meet the construction schedule. Delays caused by the failure of the Contractor to submit descriptive sheets as required will not be considered as justifiable reasons for contract time extension. The submittal shall list the seven (7) items of information as listed in Section 5.5.1.2.

**5.5.1.6 MATERIAL SAMPLES AND COLOR SAMPLES** – Prior to their submittal, all color samples and material shall be assembled and presented as required by the Department. When sample submittals are required by the contract, the Contractor shall review, approve, indicate its approval and submit to the Project Engineer samples of the materials to be used in the project and color selection samples. It is the responsibility of the Contractor to submit material and color samples for review as required at the earliest possible date after the date of award in order to meet the construction schedule. Delays caused by the failure of the Contractor to submit material and color samples will not be considered as justifiable reasons for contract time extension. The submittal shall list the seven (7) items of information as listed in Section 5.5.1.2.

**5.5.2 SUBMITTAL VARIANCES** - The Contractor shall include with the submittal, written notification clearly identifying all deviations or variances from the contract drawings, specifications and other Contract Documents. The notice shall be in a written form separate from the submittal. The variances shall also be clearly indicated on the shop drawing, descriptive sheet, material sample or color sample. Failure to so notify of and identify such variances shall be grounds for the subsequent rejection of the related work or materials, notwithstanding that the submittal was accepted by the Project Engineer. If the variances are not acceptable to the Project Engineer, the Contractor will be required to furnish the item as specified or indicated on the Contract Documents at no additional cost or time.

**5.5.3 REVIEW AND ACCEPTANCE PROCESS** - The Project Engineer shall check shop drawings and within forty-five (45) days of receipt return them to the Contractor unless otherwise agreed between the Contractor and the Department. Submittals required for work to be installed within the first sixty days after the notice to proceed shall be returned by the Project Engineer within twenty (20) days. If the volume of shop drawings submitted at any time for review is unusually large, the Contractor may inform the Project Engineer of its preferred order for review and the Project Engineer shall use reasonable efforts to accommodate the Contractor's priorities.

**5.5.3.1** The acceptance by the Project Engineer of the Contractor's submittal relates only to their sufficiency and compliance with the intention of the contract. Acceptance by the Project Engineer of the Contractor's submittal does not relieve the Contractor of any responsibility for accuracy of dimensions, details, and proper fit, and for agreement and conformity of submittal with the Contract Drawings and Specifications. Nor will the Project Engineer's acceptance relieve the Contractor of responsibility for variance from the Contract Documents unless the Contractor, at the time of submittal, has provided notice and identification of such variances required by this section. Acceptance of a variance shall not justify a contract price or time adjustment unless the Contractor requests such an adjustment at the time of submittal and the adjustment are explicitly agreed to in writing by the Department. Any such request shall include

price details and proposed scheduling modifications. Acceptance of a variance is subject to all contract terms, stipulations and covenants, and is without prejudice to any and all rights under the surety bond.

5.5.3.2 If the Project Engineer returns a submittal to the Contractor that has been rejected, the Contractor, so as not to delay the work, shall promptly make a resubmittal conforming to the requirements of the Contract Documents and indicating in writing on the transmittal and the subject submittal what portions of the resubmittal has been altered in order to meet the acceptance of the Project Engineer. Any other differences between the resubmittal and the prior submittal shall also be specifically described in the transmittal.

5.5.3.3 No mark or notation made by the Project Engineer or Consultant(s) on or accompanying the return of any submittal to the Contractor shall be considered a request or order for a change in work. If the Contractor believes any such mark or notation constitutes a request for a change in the work for which it is entitled to an adjustment in contract price and/or time, the Contractor must follow the same procedures established in Section 4.2, CHANGES for oral orders, directions, instructions, interpretations or determinations from the Project Engineer or else lose its right to claim for an adjustment.

5.6 COORDINATION OF CONTRACT DOCUMENTS - It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. The Contract Documents are complementary: any requirement occurring in one document is as binding as though occurring in all. In the event of conflict or discrepancy the priorities stated in the following subparagraphs shall govern:

5.6.1 Addenda shall govern over all other Contract Documents. Subsequent addenda issued shall govern over prior addenda only to the extent specified.

5.6.2 Special Conditions and Proposal shall govern over the General Conditions and Specifications.

5.6.3 Specifications shall govern over drawings.

5.6.4 Specification Error - Should an error or conflict appear within the specification, the Contractor shall immediately notify the Project Engineer. The Project Engineer shall promptly issue instructions as to procedure. Any requirement occurring in one or more parts of the specification is as binding as though occurring in all applicable parts.

5.6.4.1 Should an error or conflict appear within a specification section, between a listed manufacturer / product and the performance requirements of the specification section, the performance requirements shall govern.

5.6.5 Drawings:

5.6.5.1 Schedules shall govern over all other notes and drawings.

5.6.5.2 Bottom elevations of footings shown on drawings shall govern over a general note such as: "All footings shall rest on firm, undisturbed soil and extend a minimum of a certain number of feet into natural or finish grade, whichever is lower." In the event the footing must be lowered below the bottom elevation shown, the Contractor shall be entitled to additional

payment as provided in Subsection 4.2, CHANGES. In the event the footing is raised above the bottom elevation shown, the Department shall be entitled to a credit as provided in Subsection 4.2, CHANGES.

5.6.5.3 When a bottom of pile, drilled shaft, piling or cofferdam is shown as an estimated or approximate elevation, the Contractor shall plan and construct to that elevation or to any deeper elevation required by the plans or the direction by the Project Engineer. The Project Engineer, at the Project Engineer's sole discretion, may order in writing termination of all or part of the work above the estimated or approximate elevation.

5.6.5.4 Except for drawing schedules and bottom elevations as noted above, general notes shall govern over all other portions of the drawings:

5.6.5.5 Larger scale drawings shall govern over smaller scale drawings.

5.6.5.6 Figured or numerical dimensions shall govern over dimensions obtained by scaling. Measurements from the drawings when scaled shall be subject to the approval of the Project Engineer.

5.6.5.7 In cases of discrepancies in the figures or drawings, the discrepancies shall be immediately referred to the Project Engineer without whose decision said discrepancy shall not be corrected by the Contractor save at its own risk and in the settlement of any complications arising from such adjustment without the knowledge and consent of the Project Engineer, the Contractor shall bear all extra expense involved.

5.6.5.8 Items shown on the drawings that are completely void in terms of description, details, quality and / or performance standards in both the Drawings and Specifications to make a price determination shall be considered an omission and the Contractor shall immediately refer same to the Project Engineer for a decision.

5.6.5.9 Where there is a conflict between the architectural sheets and the civil or landscaping or electrical sheets, etc., the conflict shall be considered a discrepancy and the Contractor shall immediately refer same to the Project Engineer for a decision.

5.6.5.10 Any requirement occurring in one or more of the sheets is as binding as though occurring in all applicable sheets.

5.7 INTERPRETATION OF DRAWINGS AND SPECIFICATIONS - The Contractor shall carefully study and compare the Contract Documents with each other, with field conditions and with the information furnished by the Department and shall at once report to the Project Engineer errors, conflicts, ambiguities, inconsistencies or omissions discovered. Should an item not be sufficiently detailed or explained in the Contract Documents, Contractor shall report and request the Project Engineer's clarification and interpretation. The Project Engineer will issue a final clarification or final interpretation.

## 5.8 EXAMINATION OF DRAWINGS, SPECIFICATIONS, PROJECT SITE

5.8.1 The Contractor shall examine carefully the Project Site to become familiar with the conditions to be encountered in performing the Work and the requirements of the Contract Documents.

5.8.1.1 No extra compensation will be given by reason of the Contractor's misunderstanding or lack of knowledge of the requirements of the Work to be accomplished or the conditions to be encountered in performing the project.

5.8.1.2 No extra compensation will be given by reason of the Contractor's misunderstanding or lack of knowledge when the existence of differing site, subsurface or physical conditions could have been reasonably discovered or revealed as a result of any examination, investigation, exploration, test or study of the site and contiguous areas required by the bidding requirements or contract documents to be conducted by or for the Contractor.

5.8.2 When the contract drawings include a log of test borings showing a record of the data obtained by the Department's investigation of subsurface conditions, said log represents only the opinion of the Department as to the character of material encountered in its test borings and at only the location of each boring. The Contractor acknowledges that underground site conditions in Hawaii vary widely. There is no warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the work or any part of it, or that other conditions may not occur.

5.8.3 Reference is made to the Special Conditions for identification of subsurface investigations, reports, explorations and tests utilized by the Department in preparation the Contract Documents. Such reports, drawings, boring logs etc., if any, are not part of the Contract Documents.

## 5.9 COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT

5.9.1 Furnishing Drawings and Specifications - Contractor will be supplied copies of the Contract Drawings and Specifications as specified in the General Requirements. Contractor shall have and maintain at least one unmarked copy of the Contract Drawings and Specifications on the work site, at all times. Contractor shall cooperate with the Project Engineer, the Inspector(s), and other contractors in every possible way.

5.9.2 SUPERINTENDENT - The Contractor shall have a competent superintendent on the work site as its designated agent. The superintendent shall be able to read and understand the project plans and specifications and shall be experienced in the type of project being undertaken and the work being performed. The superintendent shall receive instructions from the Project Engineer or its authorized representative. The Contractor shall authorize the superintendent to (a) execute the orders and directions of the Project Engineer or its authorized representative without delay and (b) promptly supply such materials, equipment, tools, labor and incidentals as may be required to complete the project within the prescribed contract time. The Contractor shall furnish a superintendent regardless of the amount of project work sublet.

5.9.2.1 If the superintendent or agent is not present at the work site, the Project Engineer shall have the right to suspend the work as described under Section 7.24, SUSPENSION OF WORK.

5.9.2.2 The Contractor shall file with the Project Engineer a written statement giving the name of the superintendent or agent assigned to the project. The Contractor shall be responsible for notifying the Project Engineer in writing of any change in the superintendent or agent.

5.9.2.3 The requirements of this subsection 5.9.2 may be waived by the Project Engineer.

5.9.3 **ENGINEERING WORK** - The Contractor shall properly and accurately lay out the work, perform all engineering work, and furnish all engineering materials and equipment required to establish and maintain all lines, grades, dimensions and elevations called for in the drawings or required in the progress of construction, unless otherwise noted in the contract documents. The Contractor will be held definitely and absolutely responsible for any errors in lines, grades, dimensions and elevations and shall at once, on instruction from the Project Engineer, correct and make good such errors or any errors, or faults in the work resulting from errors in engineering performed under the requirements of its contract to the entire satisfaction of the Project Engineer. Full compensation for the work shall be included in the prices paid for contract items of work. No additional allowance will be made for the correction of incorrect engineering work.

5.9.3.1 The Project Engineer shall furnish the requisite bench elevations.

5.9.3.2 The Contractor shall locate and verify all lines, grades, dimensions and elevations indicated on the drawings before any excavation, or construction begins. Any discrepancy shall be immediately brought to the attention of the Project Engineer; any change shall be made in accordance with the Project Engineer's instruction.

5.9.3.3 The Contractor shall verify all street survey monuments (horizontal and vertical alignment) prior to final acceptance by the Project Engineer in accordance with any governmental requirements.

5.9.3.4 The Contractor shall provide a surveyor or Civil Engineer licensed in the State of Hawaii to verify and establish all lines, grades, dimensions and elevations.

5.9.4 **USE OF STRUCTURE OR IMPROVEMENT** - The Department shall have the right, at any time during construction of the structure or improvements, to enter same for the purpose of installing by government labor or by any other Contractor or utility any necessary work in connection with the installation of facilities, it being mutually understood and agreed, however, that the Contractors, utilities and the Department will, so far as possible work to the mutual advantage of all, where their several works in the above mentioned or in unforeseen instances touch upon or interfere with each other. As a convenience to those involved, the Project Engineer shall allocate the work and designate the sequence of construction in case of controversy between Contractors on separate projects under Department jurisdiction.

5.9.4.1 The Department shall also have the right to use the structure, equipment, improvement or any part thereof, at any time after it is considered by the Project Engineer as available. In the event that the structure, equipment or any part thereof is so used, the Department shall be responsible for all expenses incidental to such use and any damages resulting from the Department's use.

5.9.4.2 Equipment warranty will commence to run before the work is complete when and if the Department begins actual use of the equipment for the purpose for which the equipment was designed and installed.



5.9.4.3 If the Department enters the structure for construction and / or occupancy and the Contractor is delayed because of interference by the Department or by extra work resulting from damage which the Contractor is not responsible for, or by extraordinary measures the Contractor must take to accommodate the Department, the Contractor shall be granted an extension of time in accordance with Section 7.21 CONTRACT TIME. However, if such use increases the cost or delays the completion of the remaining portions of work, the Contractor shall be entitled to such extra compensation or extension of time or both, as the Department may determine to be proper. Any additional work necessary will be paid in accordance with Section 8.3, PAYMENT FOR ADDITIONAL WORK.

5.10 INSPECTION - The Project Engineer, the Department's consultants, Inspectors employed by the Department and other representatives duly authorized by the Department shall at all times have access to the work during its construction and shall be furnished with every reasonable facility for ascertaining at any time that the materials and the workmanship are in accordance with the requirements and intentions of the contract. All work done and all materials furnished shall be subject to inspection and acceptance.

5.10.1 Such inspection and approval may extend to all or part of the Work, and to the preparation, fabrication or manufacture of the materials to be used. By entering into a contract for the supply of materials, equipment or performance of labor in connection with the Work, such Material and Equipment Supplier or Labor Contractor consents to and is subject to the terms of Section 5.9 to the same extent as the Contractor.

5.10.2 AUTHORITY TO SUSPEND OPERATIONS - The Project Engineer shall have the authority to suspend operations of any work being improperly performed by issuing a written order giving the reason for shutting down the work. Should the Contractor disregard such written order, the work done thereafter will not be accepted nor paid for.

5.10.3 The inspection of the work shall not relieve the Contractor of any of its obligations to fulfill the contract as prescribed. Notwithstanding prior payment and acceptance by the Project Engineer, any defective and nonconforming work shall be corrected to comply with the contract requirements. Unsuitable, unspecified or unapproved materials may be rejected.

5.10.4 FEDERAL AGENCY INSPECTION - Projects financed in whole or in part with Federal funds shall be subject to inspection and corrective requirements at all times by the Federal Agency involved at no cost to the Department.

#### 5.11 REMOVAL OF DEFECTIVE, NON-CONFORMING AND UNAUTHORIZED WORK

5.11.1 All work which has been rejected as not conforming to the requirements of the Contract shall be remedied or removed and replaced by the Contractor in an acceptable manner and no compensation will be allowed for such removal or replacement. Any work done beyond the work limits shown on the drawings and specifications or established by the Project Engineer or any additional work done without written authority will be considered as unauthorized and will not be paid for. Work so done may be ordered removed at the Contractor's expense.

5.11.2 SCHEDULING CORRECTIVE WORK - The Contractor shall perform its corrective or remedial work at the convenience of the Department and shall obtain the Project Engineer's approval of its schedule.

5.11.3 **FAILURE TO CORRECT WORK** - Upon failure on the part of the Contractor to comply promptly with any order of the Project Engineer made under the provisions of Section 5.10, the Project Engineer shall have authority to cause defective work to be remedied or removed and replaced, and unauthorized work to be removed, at the Contractor's expense, and to deduct the costs from any monies due or to become due the Contractor.

5.12 **VALUE ENGINEERING INCENTIVE (\$3-132 HAR amended by Act 149 SLH 1999)** On projects with contract amounts in excess of \$250,000 (two hundred fifty thousand dollars), the following Value Engineering Incentive Clause shall apply to allow the Contractor to share in cost savings that ensue from cost reduction proposals it submits.

5.12.1 The Value Engineering Incentive Clause applies to all Value Engineering Change Proposals (cost reduction proposals, hereinafter referred to as (VECP) initiated and developed by the Contractor for changing the drawings, designs, specifications or other requirements of this contract. This clause does not however, apply to any VECP unless it is identified as such by the Contractor at the time of its submission to the Project Engineer.

5.12.2 **VALUE ENGINEERING CHANGE PROPOSAL (VECP) – All VECP must:**

5.12.2.1 Result in a savings to the Department of at least \$4000 (four thousand dollars) by providing less costly items and without impairing any essential functions and characteristics such as service life, reliability, economy of operation, ease of maintenance and all necessary features of the completed work;

5.12.2.2 Require, in order to be applied to this Contract, a change order to this Contract; and

5.12.2.3 Not adversely impact on the schedule of performance or the Contract completion date.

5.12.3 **VECP Required Information** - The VECP will be processed expeditiously and in the same manner as prescribed for any other change order proposal. As a minimum, the following information will be submitted by the Contractor with each proposal:

5.12.3.1 A description of the difference between the existing contract requirements and the VECP, and the comparative advantages and disadvantages of each including durability, service life, reliability, economy of operation, ease of maintenance, design safety standards, desired appearance, impacts due to construction and other essential or desirable functions and characteristics as appropriate;

5.12.3.2 An itemization of the requirements of the contract which must be changed if the VECP is adopted and a recommendation as to how to make each such change;

5.12.3.3 An estimate of the reduction in performance costs that will result from adoption of the VECP taking into account the costs of implementation by the Contractor, including any amounts attributable to subcontracts, and the basis for the estimate;

5.12.3.4 A prediction of any effects the VECP would have on other costs to the Department, such as Department furnished property costs, costs of related items, and costs of maintenance and operation over the anticipated life of the material, equipment, or facilities as appropriate; the



construction schedule, sequence and time; and bid item totals used for evaluation and payment purposes;

5.12.3.5 A statement of the time by which a change order adopting the VECP must be issued so as to obtain the maximum cost reduction during the remainder of this contract noting any effect on the contract time; and

5.12.3.6 The dates of any previous submissions of the VECP, the numbers of any Government contracts under which submitted and the previous actions by the Government, if known.

5.12.4 Required Use of Licensed Architect or Engineer - When, in the judgment of the Project Engineer, a VECP alters the design prepared by a registered professional architect or engineer, the Contractor shall ensure the changes to be prepared are by or under the supervision of a licensed professional architect or engineer, and stamped and so certified.

5.12.5 Unless and until a change order applies a VECP to a contract, the Contractor shall remain obligated to perform in accordance with the terms of the contract and the Department shall not be liable for delays incurred by the Contractor resulting from the time required for the Department's determination of the acceptability of the VECP.

5.12.5.1 The determination of the Project Engineer as to the acceptance of any VECP under a contract shall be final.

5.12.6 ACCEPTANCE OF VECP - The Project Engineer may accept in whole or in part any VECP submitted pursuant to this section by issuing a change order to the Contract. Prior to issuance of the change order, the Contractor shall submit complete final contract documents similar to those of the original Contract showing the accepted changes and the new design and features as well as the following:

5.12.6.1 Design calculations;

5.12.6.2 The design criteria used; and

5.12.6.3 A detailed breakdown of costs and expenses to construct or implement such revisions.

5.12.6.4 The change order will identify the final VECP on which it is based.

5.12.7 VECP PRICE ADJUSTMENTS - When a VECP is accepted under a contract, an adjustment in the contract price shall be made in accordance with Section 4.4, PRICE ADJUSTMENT. The adjustment shall first be established by determining the effect on the Contractor's cost of implementing the change, including any amount attributable to subcontractors and to the Department's charges to the Contractor for architectural, engineering, or other consultant services, and the staff time required to examine and review the proposal. The contract price shall then be reduced by fifty percent (50%) of the net estimated decrease in the cost of performance.

5.12.8 The Contractor may restrict the Department's right to use the data or information or both, on any sheet of a VECP or of the supporting data, submitted pursuant to this paragraph, if it is stated on that sheet as follows:

5.12.8.1 "This data or information or both shall not be disclosed outside the Department or be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate this VECP. This restriction shall not limit the Department's right to use this data or information or both if obtained from another source, or is otherwise available, without limitations. If this VECP is accepted by the Department by issuance of a change order after the use of this data or information or both in such an evaluation, the Department shall have the right to duplicate, use and disclose any data or information or both pertinent to the proposal as accepted in any manner and for any purpose whatsoever and have others so do."

5.12.9 In the event of acceptance of a VECP, the Department shall have all rights to use, duplicate or disclose in whole or in part in any manner and for any purpose whatsoever, and to have or permit others to do so, any data or information or both reasonably necessary to fully utilize such proposal.

5.12.10 The Contractor shall submit with each VECP all required information and provide all additional information as may be required by the Project Engineer to evaluate and implement the VECP. The cost for preparing the VECP shall be the Contractor's responsibility, and any part of the Contractor's cost for implementing the change shall be due only when the proposal is accepted and a change order is issued.

5.12.11 If the service of the Department's architect, Project Engineer or consultant is necessary to review and evaluate a VECP, the cost therefor shall be paid for by the Contractor.

5.12.12 Each VECP shall be evaluated as applicable to this contract, and past acceptance on another Department project for a similar item shall not be automatic grounds for approval.

5.12.13 The method by which the Contractor will share a portion of the cost savings from an accepted VECP shall be for this contract only, and no consideration shall be made for future acquisition, royalty type payment or collateral savings.

5.12.13.1 The Department may accept the proposed VECP in whole or in part. The Executive Director shall issue a contract change order to identify and describe the accepted VECP.

5.13 SUBCONTRACTS - Nothing contained in the contract documents shall create a contractual relationship between the Department and any subcontractor.

5.13.1 SUBSTITUTING SUBCONTRACTORS - Contractors may enter into subcontracts only with subcontractors listed in the proposal. No subcontractor may be added or deleted and substitutions will be allowed only if the subcontractor:

5.13.1.1 Fails, refuses or is unable to enter into a subcontract; or

5.13.1.2 Becomes insolvent; or

5.13.1.3 Has its subcontractor's license suspended or revoked; or

5.13.1.4 Has defaulted or has otherwise breached the subcontract in connection with the subcontracted work; or

5.13.1.5 Is unable to comply with other requirements of law applicable to contractors, subcontractors and public works projects.

5.13.2 Requesting Approval to Substitute a Subcontractor - Requests to substitute a subcontractor shall be submitted to the Project Engineer for approval. Contractor agrees to hold the Department harmless and indemnify the Department for all claims, liabilities, or damages whatsoever, including attorney's fees arising out of or related to the approval or disapproval of the substitution.

5.13.3 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the General Conditions and the other contract documents insofar as applicable to the work of the subcontractor and to give the Contractor the same rights regarding the termination of a subcontractor as the Department may exercise over the Contractor.

5.13.4 The Contractor shall not sponsor any unliquidated subcontractor's claim against the Department and shall defend, indemnify and hold the Department harmless against any direct claims by its subcontractors. Any claim for additional compensation by a subcontractor in connection with the work shall be made only against the Contractor. The Contractor may not assert any such claim against the Department until the liability of the Contractor has been unconditionally established by negotiation, arbitration or litigation, and the amount due the subcontractor has been determined, save for interest due.

5.13.5 Once a subcontractor's claim is established, should the Contractor intend to make the claim against the Department, it shall follow the procedure set forth under Section 7.25, DISPUTES AND CLAIMS.

5.13.6 SUBCONTRACTING - Contractor shall perform with its own organization, work amounting to not less than twenty percent (20%) of the total contract cost, exclusive of costs for materials and equipment the Contractor purchases for installation by its subcontractors, except that any items designated by the Department in the contract as "specialty items" may be performed by a subcontractor and the cost of any such specialty items so performed by the subcontractor may be deducted from the total contract cost before computing the amount of work required to be performed by the Contractor with its own organization.

END OF ARTICLE 5

## **ARTICLE 6 - CONTROL OF MATERIALS AND EQUIPMENT**

**6.1 MATERIALS AND EQUIPMENT** - Contractor shall furnish, pay for and install all material and equipment as called for in the drawings and specifications. Materials and equipment shall be new and the most suitable for the purpose intended unless otherwise specified. The Department does not guarantee that the specified or pre-qualified product listed in the drawings and specifications are available at the time of bid or during the contract period.

### **6.2 SOURCE OF SUPPLY AND QUALITY OF MATERIALS**

**6.2.1** Only materials conforming to the drawings and specifications and, when required by the contract have been accepted by the Project Engineer, shall be used. In order to expedite the inspection and testing of materials, at the request of the Project Engineer, the Contractor shall identify its proposed sources of materials within ten (10) days after notification by the Project Engineer.

**6.2.2** At the option of the Project Engineer, the materials may be accepted by the Project Engineer at the source of supply before delivery is started. Representative preliminary samples of the character and quantity prescribed shall be submitted by the Contractor or producer for examination and tested in accordance with the methods referred to under samples and tests.

**6.2.3 PROJECT ENGINEER'S AUTHORIZATION TO TEST MATERIALS** - Materials proposed to be used may be inspected and tested whenever the Project Engineer deems necessary to determine conformance to the specified requirements. The cost of testing shall be borne by the Contractor. However, should test results show that the material(s) is in compliance with the specified requirements; the cost of the testing will be borne by the Department.

**6.2.4 UNACCEPTABLE MATERIALS** - In the event material(s) are found to be unacceptable, the Contractor shall cease their use, remove the unacceptable material(s) that have already been installed or applied, and furnish acceptable materials all at no additional cost to the Department. No material which is in any way unfit for use shall be used.

### **6.3 SUBSTITUTION OF MATERIALS AND EQUIPMENT AFTER BID OPENING**

**6.3.1 SUBSTITUTION OF MATERIALS AND EQUIPMENT BEFORE BID OPENING** - Refer to Section 2.7, SUBSTITUTION OF MATERIALS AND EQUIPMENT BEFORE BID OPENING. For materials and equipment submitted in compliance with Section 2.7, if after installing the substituted product, an unlisted variance is discovered the Contractor shall immediately replace the product with a specified product at no cost to the Department.

**6.3.2 SUBSTITUTION AFTER CONTRACT AWARD** - Subject to the Project Engineer's determination if the material or equipment is equal to the one specified or prequalified, substitution of material or equipment may be allowed after the Letter of Award is issued only:

**6.3.2.1** If the specified or prequalified item is delayed by unforeseeable contingencies beyond the control of the Contractor which would cause a delay in the project completion; or

**6.3.2.2** If any specified or prequalified item is found to be unusable or unavailable due to a change by the manufacturer or other circumstances; or

6.3.2.3 If the Contractor desires to provide a more recently developed material, equipment, or manufactured model from the same named manufacturer than the one specified or prequalified; or

6.3.2.4 If the specified material and / or equipment inadvertently lists only a single manufacturer.

6.3.3 A substitution request after the Contract is awarded shall be fully explained in writing. Contractor shall provide brochures showing that the substitute material and / or equipment is equal or better in essential features and also provide a matrix showing comparison of the essential features. Contractor shall justify its request and include quantities and unit prices involved, respective supplier's price quotations and such other documents necessary to fully support the request. Any savings in cost will be credited to the Department. Contractor shall absorb any additional cost for the substitute item(s) or for its installation. Submitting a substitution request, does not imply that substitutions, for brand name specified materials and equipment will be allowed. The Project Engineer may reject and deny any request deemed irregular or not in the best interest of the Department. A request for substitution shall not in any way be grounds for an extension of contract time. At the discretion of the Project Engineer, a time extension may be granted for an approved substitution.

6.4 ASBESTOS CONTAINING MATERIALS - The use of materials or equipment containing asbestos is prohibited under this contract. Contractor warrants that all materials and equipment incorporated in the project are asbestos-free.

#### 6.5 TEST SAMPLES

6.5.1 The Project Engineer may require any or all materials to be tested by means of samples or otherwise. Contractor shall collect and forward samples requested by the Project Engineer. Contractor shall not use or incorporate any material represented by the samples until all required tests have been made and the material has been accepted. In all cases, the Contractor shall furnish the required samples without charge. Where samples are required from the completed work, the Contractor shall cut and furnish samples from the completed work. Samples so removed shall be replaced with identical material and refinished. No additional compensation will be allowed for furnishing test samples and their replacement with new materials.

6.5.2 Tests of the material samples will be made in accordance with the latest standards of the American Society for Testing and Materials (ASTM), as amended prior to the contract date unless otherwise provided. In cases where a particular test method is necessary or specifications and serial numbers are stipulated, the test shall be made by the method stated in the above-mentioned publication. Where the test reference is the American Association of State Highway and Transportation Officials (AASHTO), it means the specifications and serial numbers of the latest edition and amendments prior to the bid date.

6.5.3 The Project Engineer may, at no extra cost to the Department retest any materials which have been tested and accepted at the source of supply after the same has been delivered to the work site. The Project Engineer shall reject all materials which, when retested, do not meet the requirements of the Contract.

## 6.6 MATERIAL SAMPLES

6.6.1 The Contractor shall furnish all samples required by the drawings and specifications or that may be requested by the Project Engineer of any and all materials or equipment it proposes to use. Unless specifically required, samples are not to be submitted with the bid.

6.6.2 No materials or equipment of which samples are required shall be used on the Work until the Project Engineer has received and accepted the samples. If the Contractor proceeds to use such materials before the Project Engineer accepts the samples, the Contractor shall bear the risk.

6.6.3 Contractor shall furnish two (2) copies of a transmittal letter with each shipment of samples. The letter shall provide a list of the samples, the name of the building or work for which the materials are intended and the brands of the materials and names of the manufacturers. Also, each sample submitted shall have a label indicating the material represented, its place of origin, the names of the producer, the Contractor and the building or work for which the material is intended. Samples of finished materials shall be marked to indicate where the materials represented are required by the drawings or specifications.

6.6.4 Acceptance of any sample(s) shall be only for the characteristics or for the uses named in such acceptance and for no other purpose. Acceptance of samples shall not change or modify any contract requirement. All samples will be provided by the Contractor at no extra cost to the Department. See also Section 5.5, SHOP DRAWINGS AND OTHER SUBMITTALS.

6.7 NON-CONFORMING MATERIALS - All materials not conforming to the requirements of this contract documents, whether in place or not, shall be rejected and removed immediately from the site of work unless otherwise permitted by the Project Engineer in writing. No rejected material which has subsequently been made to conform shall be used unless and until written acceptance has been given by the Project Engineer. If the Contractor fails to comply forthwith with any order of the Project Engineer made under the provisions of this Section 6.7, the Project Engineer shall have the authority to remove and replace non-conforming materials and charge the cost of removal and replacement to the Contractor.

6.8 HANDLING MATERIALS - Contractor shall handle all materials to preserve their quality and fitness for work. Transport aggregates from the source or storage site to the work in tight vehicles to prevent loss or segregation of materials after loading and measuring.

6.9 STORAGE OF MATERIALS - Contractor shall store all materials to preserve their quality and fitness for the work. Unless otherwise provided, any portion of the project site within the Project Contract Limit not required for public travel may be used for storage purposes and for the Contractor's plant and equipment. Any additional space required shall be provided by the Contractor at its expense subject to the Project Engineer's acceptance. Contractor shall store materials on wooden platforms or other hard, clean surfaces and covered to protect it from the weather and damage. Stored materials shall be located to allow prompt inspection.

6.10 PROPERTY RIGHTS IN MATERIALS - Nothing in the contract shall be construed to vest in the Contractor any right to any materials and equipment after such materials and equipment have been attached, affixed to, or placed in the work.

**6.11 ANTITRUST CLAIMS -** The STATE and the CONTRACTOR recognized that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and material purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

**END OF SECTION 6**

## **ARTICLE 7 - PROSECUTION AND PROGRESS**

(Including Legal Relations and Responsibility)

### **7.1 PROSECUTION OF THE WORK**

7.1.1 After approval of the Contract by the Executive Director, a Notice to Proceed will be given to the Contractor as described in Section 3.10, NOTICE TO PROCEED. The Notice to Proceed will indicate the date the Contractor is expected to begin the construction and from which date contract time will be charged.

7.1.2 The Contractor shall begin work no later than ten (10) working days from the date in the Notice to Proceed and shall diligently prosecute the same to completion within the contract time allowed. The Contractor shall notify the Project Engineer at least three (3) working days before beginning work.

7.1.3 If any subsequent suspension and resumption of work occurs, the Contractor shall notify the Project Engineer at least twenty-four (24) hours before stopping or restarting actual field operations.

7.1.4 **WORKING PRIOR TO NOTICE TO PROCEED** - The Contractor shall not begin work before the date in the Notice to Proceed. Should the Contractor begin work before receiving the Notice to Proceed, any work performed in advance of the specified date will be considered as having been done at the Contractor's risk and as a volunteer and subject to the following conditions:

7.1.4.1 Under no circumstances shall the Contractor commence work on site until it has notified the Project Engineer of its intentions and has been advised by the Project Engineer in writing that the project site is available to the Contractor. The project site will not be made available until the Contractor has complied with commencement requirements under Section 7.2, COMMENCEMENT REQUIREMENTS.

7.1.4.2 In the event the contract is not executed, the Contractor shall, at its own expense, do such work as is necessary to leave the site in a neat condition to the satisfaction of the Project Engineer. The Contractor shall not be reimbursed for any work performed.

7.1.4.3 All work done prior to the Notice to Proceed shall be performed in accordance with the Contract Documents, but will only be considered authorized work and be paid for as provided in the Contract after the Notice to Proceed is issued.

7.1.5 For repairs and/or renovations of existing buildings, unless otherwise permitted by the Project Engineer, the Contractor shall not commence with the physical construction unless all or sufficient amount of materials are available for either continuous construction or completion of a specified portion of the work. When construction is started, the Contractor shall work expeditiously and pursue the work diligently until it is complete. If only a portion of the work is to be done in stages, the Contractor shall leave the area safe and usable for the user agency at the end of each stage.



**7.2      Prior to beginning work on site, the Contractor shall submit the following to the Project Engineer:**

**7.2.1      Identification of the Superintendent or authorized representative on the job site. Refer to Section 5.9, COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT;**

**7.2.2      Proposed Working Hours on the job. Refer to Section 7.5, NORMAL WORKING HOURS;**

**7.2.3      Permits and Licenses. Refer to Section 7.4, PERMITS AND LICENSES;**

**7.2.4      Schedule of Prices to be accepted for the agreed Monthly Payment Application. Unless the proposal provides unit price bids on all items in this project, the successful Bidder will be required, after the award of contract, to submit a schedule of prices for the various items of construction included in the contract. For projects involving more than a single building and / or facility, the breakdown cost shall reflect a separate schedule of prices for the various items of work for each building and/or facility. The sum of the prices submitted for the various items must equal the lump sum bid in the Bidder's proposal. This schedule will be subject to acceptance by the Project Engineer who may reject same and require the Bidder to submit another or several other schedules if in the Project Engineer's opinion the prices are unbalanced or not sufficiently detailed. This schedule of prices shall be used for the purpose of determining the value of monthly payments due the Contractor for work installed complete in place; and may be used as the basis for determining cost and credit of added or deleted items of work, respectively;**

**7.2.4.1      The Contractor shall estimate at the close of each month the percentage of work completed under each of the various construction items during such month and submit the Monthly Payment Application to the Project Engineer for review and approval. The Contractor shall be paid the approved percentage of the price established for each item less the retention provided in Section 8.4, PROGRESS AND/OR PARTIAL PAYMENTS; and**

**7.2.5      PROOF OF INSURANCE COVERAGE - Certificate of Insurance or other documentary evidence satisfactory to the Project Engineer that the Contractor has in place all insurance coverage required by the contract. Refer to Section 7.3, INSURANCE REQUIREMENTS.**

**7.2.6      Until such time as the above items are processed and approved, the Contractor shall not be allowed to commence on any operations unless authorized by the Project Engineer.**

**7.3      INSURANCE REQUIREMENTS**

**7.3.1      OBLIGATION OF CONTRACTOR - Contractor shall not commence any work until it obtains, at its own expense, all required herein insurance. Such insurance shall be provided by an insurance company authorized by the laws of the State to issue such insurance in the State of Hawaii. Coverage by a "Non-Admitted" carrier is permissible provided the carrier has a Best's Rating of "A-VII" or better.**

7.3.2 All insurance described herein will be maintained by the Contractor for the full period of the contract and in no event will be terminated or otherwise allowed to lapse prior to written certification of final acceptance of the work by the Department.

7.3.3 Certificate(s) of Insurance acceptable to the Department shall be filed with the Project Engineer prior to commencement of the work. Certificates shall identify if the insurance company is a "captive" insurance company or a "Non-Admitted" carrier to the State of Hawaii. The Best's rating must be stated for the "Non-Admitted" carrier. Certificates shall contain a provision that coverage(s) being certified will not be cancelled or materially changed without giving the Project Engineer at least thirty (30) days prior written notice. The Department is to be named as Additional Insured on any of the required insurance and it shall be so noted on the certificate. Should any policy be cancelled before final acceptance of the work by the Department, and the Contractor fails to immediately procure replacement insurance as specified, the Department, in addition to all other remedies it may have for such breach, reserves the right to procure such insurance and deduct the cost thereof from any money due to the Contractor.

7.3.4 Nothing contained in these insurance requirements is to be construed as limiting the extent of Contractor's responsibility for payment of damages resulting from its operations under this Contract, including the Contractor's obligation to pay liquidated damages, nor shall it affect the Contractor's separate and independent duty to defend, indemnify and hold the Department harmless pursuant to other provisions of this Contract. In no instance will the Department's exercise of an option to occupy and use completed portions of the work relieve the Contractor of its obligation to maintain the required insurance until the date of final acceptance of the work.

7.3.5 All insurance described herein shall be primary and cover the insured for all work to be performed under the Contract, all work performed incidental thereto or directly or indirectly connected therewith, including traffic detour work or other work performed outside the work area and all change order work.

7.3.6 The Contractor shall, from time to time, furnish the Project Engineer, when requested, satisfactory proof of coverage of each type of insurance required covering the work. Failure to comply with the Project Engineer's request may result in suspension of the work, and shall be sufficient grounds to withhold future payments due the Contractor and to terminate the contract for Contractor's default.

7.3.7 TYPES OF INSURANCE - Contractor shall purchase and maintain insurance described below which shall provide coverage against claims arising out of the Contractor's operations under the Contract, whether such operations be by the Contractor itself or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

7.3.7.1 WORKER'S COMPENSATION - The Contractor shall obtain worker's compensation insurance for all persons whom they employ in carrying out the work under this contract. This insurance shall be in strict conformity with the requirements of the most current and applicable State of Hawaii Worker's Compensation Insurance laws in effect on the date of the execution of this contract and as modified during the duration of the contract.

7.3.7.2 COMMERCIAL GENERAL LIABILITY INSURANCE AND AUTOMOBILE INSURANCE Contractor's commercial general liability insurance and automobile liability

insurance shall both be obtained in a combined, single limit of not less than \$1,000,000 (one million dollars) unless otherwise indicated in the Special Conditions per occurrence that shall include coverage for bodily injury, sickness, disease or death of any person, arising directly or indirectly out of, in connection with, the performance of work under this contract.

7.3.7.3 The Contractor's property damage liability insurance shall provide for a single combined limit of not less than \$1,000,000 (one million dollars) unless otherwise indicated in the Special Conditions for all damages arising out of injury to or destruction of property of others including the Department's, arising directly or indirectly out of or in connection with the performance of the work under this contract including explosion or collapse.

7.3.7.4 The Contractor shall either (a) Require each of its subcontractors to procure and to maintain during the life of its subcontract, subcontractor's comprehensive general liability, automobile liability and property damage liability insurance of the type and in the same amounts specified herein; or (b) Insure the activities of its subcontractors in its own policy.

7.3.7.5 **BUILDERS RISK INSURANCE** - Unless excluded by the Special Conditions of this contract, the Contractor shall provide builder's risk insurance during the progress of the work and until final acceptance by the Department upon completion of the contract. It shall be "All Risk" (including but not limited to earthquake, windstorm and flood damage) completed value insurance coverage on all completed work and work in progress to the full replacement value thereof. Such insurance shall include the Department as an additional named insured. The Contractor shall submit to the Project Engineer for its approval all items deemed to be uninsurable. The policy may provide for a deductible in an amount of up to twenty five percent (25%) of the amount insured by the policy. With respect to all losses up to any deductible amount, the relationship between the Contractor and the Department shall be that of insurer and the additional insured respectively as if no deductible existed. The Contractor is responsible for theft, if any item of the contract is stolen prior to, or after installation, until the work is accepted by the Department. Progress payment does not constitute acceptance.

#### 7.4 PERMITS AND LICENSES

7.4.1 The Department or its representative may process Federal (e.g. Corps of Engineers), State and county permit applications. The Contractor shall pick up the pre-processed Permits at the appropriate governmental agency and pay the required fees. Other permits necessary for the proper execution of the work such as utility connection permits, elevator installation permits etc., unless processed by the Department and paid for by the Contractor, shall be obtained and paid for by the Contractor.

7.4.2 Until such time as the above permits are approved, the Contractor shall not be allowed to commence any operations without written approval of the Project Engineer.

7.4.3 The Project Engineer reserves the right to waive application and processing of the building permit.

7.5 **NORMAL WORKING HOURS** - Prior to beginning operations, unless otherwise established by the Department, the Contractor shall notify the Project Engineer in writing of the time in hours and minutes, A.M. and P.M. respectively, at which it desires to begin and end the day's work. If the Contractor desires to change the working hours, it shall request the Project Engineer's approval three (3) consecutive working days prior to the date of the change.

## **7.6 HOURS OF LABOR (§104-2 HRS)**

**7.6.1** No laborer or mechanic employed on the job site of any public work of the Department or any political sub-division thereof shall be permitted or required to work on Saturday, Sunday or a legal holiday of the State or in excess of eight (8) hours on any other day unless the laborer or mechanic receives overtime compensation for all hours worked on Saturday, Sunday and a legal holiday of the State or in excess of eight (8) hours on any other day. For the purposes of determining overtime compensation under this Section 7.6, the basic hourly rate of any laborer or mechanic shall not be less than the basic hourly rate determined by the Department of Labor and Industrial Relations to be the prevailing basic hourly rate for corresponding classes of laborers and mechanics on projects of similar character in the Department.

**7.6.2** Overtime compensation means compensation based on one and one-half times the laborers or mechanics basic hourly rate of pay plus the cost to an employer of furnishing a laborer or mechanic with fringe benefits.

## **7.7 PREVAILING WAGES (State §104-2 HRS & Federal Davis-Bacon)**

**7.7.1** The Contractor shall at all time observe and comply with all provisions of Chapter 104, HRS, the significant requirements of which are emphasized in the Department of Labor and Industrial Relations Publication No. H104-3 entitled "Requirements of Chapter 104, Hawaii Revised Statutes, Wages and Hours of Employees on Public Works Law".

The Contractor must also comply with all provisions of Federal Davis-Bacon Act (40 U.S.C. 276-276a-5 and Code of Federal Regulation (CFR) Title 29 and related Acts.

**7.7.2** **WAGE RATE SCHEDULE** - The wage rate schedule is not physically enclosed in the bid documents. However, the wage rate schedule is incorporated herein by reference and made a part of the Bid and Contract Documents. The bidder must obtain and use the latest minimum rates ten (10) days prior to the date set for the bid opening of bids. The wage rate schedule may be obtained from the Contracts Office, HHFDC, 677 Queen Street, Suite 300, Honolulu, Hawaii or, State Department of Labor and Industrial Relations web site: <http://www.loihi@rs.dlir.state.hi.us> or the Federal Department of Labor (Davis-Bacon) wage rate schedule web site: <http://www.access.gpo.gov/davisbacdavbacsearch.html>.

**7.7.3** The Contractor or its subcontractor(s) shall pay all laborers and mechanics employed on the job site, unconditionally and not less often than once a week, and without deduction or rebate on any account except as allowed by law, the full amounts of their wages including overtime, accrued to not more than five (5) working days prior to the time of payment, at wage rates not less than those stated in the contract, regardless of any contractual relationship which may be alleged to exist between the Contractor and subcontractor and such laborers and mechanics. The wages stated in the contract shall not be less than the minimum prevailing wages (basic hourly rate plus fringe benefits), as determined by the Director of Labor and Industrial Relations and published in wage rate schedules. Any increase in wage rates, as determined by the Director of Labor and Industrial Relations and issued in the wage rate schedule, shall be applicable during the performance of the contract, in accordance with section 104-2(a) and (b), Hawaii Revised Statutes. Notwithstanding the provisions of the original contract, if the Director of Labor and Industrial Relations determines that prevailing wages have

increased during the performance of the contract, the rate of pay of laborers and mechanics shall be raised accordingly.

7.7.4 The applicable wage rate schedule shall be physically included in the Contract Documents executed by the successful Bidder.

7.7.5 **POSTING WAGE RATE SCHEDULE** - The rates of wages to be paid shall be posted by the Contractor in a prominent and easily accessible place at the job site and a copy of such wages required to be posted shall be given to each laborer and mechanic employed under the contract by the Contractor at the time the person is employed thereunder, provided that where there is a collective bargaining agreement, the Contractor does not have to provide its employees the wage rate schedules. Any revisions to the schedule of wages issued by the Director of Labor and Industrial Relations during the course of the Contract shall also be posted by the Contractor and a copy provided to each laborer and mechanic employed under the Contract as required above.

7.7.6 The Executive Director may withhold from the Contractor so much of the accrued payments as the Executive Director may consider necessary to pay to laborers and mechanics employed by the Contractor or any subcontractor on the job site. The accrued payments withheld shall be the difference between the wages required by this Contract and the wages actually received by such laborers or mechanics.

7.8 **FAILURE TO PAY REQUIRED WAGES (§ 104-4, HRS or Federal Davis-Bacon)** - If the Department finds that any laborer or mechanic employed on the job site by the Contractor or any subcontractor has been or is being paid wages at a rate less than the required rate by the Contract, or has not received their full overtime compensation, the Department may, by written notice to the Contractor, terminate its right, or the right of any subcontractor, to proceed with the work or with the part of the work on which the required wages or overtime compensation have not been paid and may complete such work or part by contract or otherwise, and the Contractor and its sureties shall be liable to the Department for any excess costs occasioned thereby.

7.9 **PAYROLLS AND PAYROLL RECORDS (§104-3 HRS)**

7.9.1 A certified copy of each weekly payroll shall be submitted to the Executive Director within seven (7) calendar days after the end of each weekly payroll period. Failure to do so on a timely basis shall be cause for withholding of payments, termination of the contract, and/or debarment. The Contractor shall be responsible for the timely submission of certified copies of payrolls of all subcontractors. The certification shall affirm that payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision, any amendments thereto during the period of the contract, and that the classifications set forth for each laborer and mechanic conform with the work they performed.

7.9.2 Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the General Contractor and its subcontractors, if any, during the course of the work and preserved for a period of four (4) years thereafter. Such records shall contain the name of each employee, their address, their correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. Such records shall be made available for inspection at a place designated by the Executive Director, the Director of

Labor and any authorized persons who may also interview employees during working hours on the job site.

7.9.3 Note that the falsification of certifications noted in this Section 7.9 may subject the Contractor or subcontractor to penalties and debarment under the laws referenced in Section 7.14, LAWS TO BE OBSERVED and / or criminal prosecution.

#### 7.10 OVERTIME AND NIGHT WORK

7.10.1 Overtime work shall be considered as work performed in excess of eight (8) hours in any one (1) day or work performed on Saturday, Sunday or legal holiday of the State. Overtime and night work are permissible when approved by the Project Engineer in writing, or as called for elsewhere within these Contract Documents.

7.10.2 OVERTIME NOTIFICATION - Contractor shall inform the Project Engineer in writing at least two (2) working days in advance as to exactly what specific work is to be done during any overtime and night period to insure that proper inspection will be available.

7.10.3 In the event that work other than that contained in the above notification is performed and for which the Project Engineer determines Department inspection services were necessary but not available because of the lack of notification, the Contractor may be required to remove all such work and perform the work over again in the presence of Department inspection personnel.

7.10.4 Any hours worked in excess of the normal eight (8) working hours per day or on Saturdays, Sundays or legal State holidays will not be considered a working day.

7.10.5 The Department hereby reserves the right to cancel the overtime, night, Saturday, Sunday or legal State holiday work when it is found that work during these periods is detrimental to the public welfare or the user agency.

#### 7.11 OVERTIME AND NIGHT PAYMENT FOR DEPARTMENT INSPECTION SERVICE

7.11.1 Whenever the Contractor's operations require the Department's inspection and staff personnel to work overtime or at night, the Contractor shall reimburse the Department for the cost of such services unless otherwise instructed in the Contract. The Project Engineer will notify the Contractor of the minimum number of required Department employees and other personnel engaged by the Department prior to the start of any such work. The costs chargeable to the Contractor shall include but not be limited to the following:

7.11.1.1 The cost of salaries which are determined by the Department and includes overtime and night time differential for the Department's staff and inspection personnel. In addition to the cost of the salaries, the Contractor shall reimburse the Department's share of contributions to the employee's retirement, medical plan, social security, vacation, sick leave, worker's compensation funds, per diem, and other applicable fringe benefits and overhead expenses;

7.11.1.2 The transportation cost incurred by the Department's staff and inspection personnel which are based on established rental rates or mileage allowance in use by the Department for the particular equipment or vehicle; and/or



7.11.1.3 Fees and other costs billed the Department by Consultants engaged on the project for overtime and/or night time work.

7.11.2 PAYMENT FOR INSPECTION SERVICES - The monies due the Department for staff and inspection work and use of vehicles and equipment as determined in subsection 7.11.1 shall be deducted from the monies due or to become due the Contractor. In any and all events, the Contractor shall not pay the Department's employees directly.

## 7.12 LIMITATIONS OF OPERATIONS

7.12.1 Contractor shall at all times conduct the work in such manner and in such sequence as will insure the least practicable interference with pedestrian and motor traffic passageways. The Contractor shall furnish convenient detours and provide and plan all other appropriate signs, flashers, personnel, warnings, barricades and other devices for handling pedestrian and motor traffic.

7.12.2 In the event that other contractors are also employed on the job site, the Contractor shall arrange its work and dispose of materials so as not to interfere with the operations of the other contractors engaged upon adjacent work. The Contractor shall join its work to that of others and existing buildings in a proper manner, and in accordance with the drawings and specifications, and perform its work in the proper sequence in relation to that of others, all as may be directed by the Project Engineer.

7.12.3 Each Contractor shall be responsible for any damage done by it to work performed by another contractor. Each Contractor shall conduct its operations and maintain the work in such condition that no fugitive dust shall be created and adequate drainage shall be in effect at all times.

7.12.4 In the event that the Contractor fails to prosecute its work as provided in this Section 7.12 or disregards the directions of the Project Engineer, the Project Engineer may suspend the work until such time as the Contractor provides for the prosecution of the work with minimum interference to traffic and passageways or other contractors, dust control, adequate drainage, the repair of damage and complies with the direction of the Project Engineer. No payment will be made to the Contractor for the costs of such suspension.

## 7.13 ASSIGNMENT OR CHANGE OF NAME (§3-125-14 HAR)

7.13.1 SUBCONTRACTS AND ASSIGNMENT - The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE and (ii) the CONTRACTOR's assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR's assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

7.13.2 RECOGNITION OF A SUCCESSOR IN INTEREST - When in the best interest of the State, a successor in interest may be recognized in an assignment Contract in which the

STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

7.13.2.1 The Assignee assumes all of the CONTRACTOR's obligations;

7.13.2.2 The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and

7.13.2.3 The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

7.13.3 CHANGE OF NAME - When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR's articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR's name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

7.13.4 REPORTS - All assignment Contracts and amendments to this Contract effecting changes of the CONTRACTOR's name or novations hereunder shall be reported to the CPO within thirty days of the date that the assignment Contract or amendment becomes effective.

7.13.5 ACTIONS AFFECTING MORE THAN ONE PURCHASING AGENCY - Notwithstanding the provisions of subparagraphs 7.13.2 through 7.13.4 herein, when the CONTRACTOR holds Contracts with more than one purchasing agency of the State, the assignment Contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.

7.14 LAWS TO BE OBSERVED - The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Contract.

7.14.1 The Contractor at all times shall observe and comply with all Federal, State and local laws or ordinances, rules and regulations which in any manner affect those engaged or employed in the work, the materials used in the work, and the conduct of the work. The Contractor shall also comply with all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto before and after the date of this Contract.

7.14.2 The Contractor shall defend, protect, hold harmless and indemnify the State and its departments and agencies and all their officers, representatives, employees or agents against any claim or liability arising from or based on the violation of any such laws, ordinances, rules and regulations, orders or decrees, whether such violation is committed by the Contractor or its Subcontractor(s) or any employee of either or both. If any discrepancy or inconsistency is discovered in the contract for the work in relation to any such laws, ordinances, rules and regulations, orders or decrees, the Contractor shall forthwith report the same to the Project Engineer in writing.



7.14.3 While the Contractor must comply with all applicable laws, attention is directed to: Wage and Hours of Employees on Public Works, Chapter 104, Hawaii Revised Statutes (HRS); Hawaii Public Procurement Code, Authority to debar or suspend, Section 103D-702, HRS; Hawaii Employment Relations Act, Chapter 377, HRS; Hawaii Employment Security Law, Chapter 383, HRS; Worker's Compensation Law, Chapter 386, HRS; Wage and Hour Law, Chapter 387, HRS; Occupational Safety and Health, Chapter 396, HRS; and Authority to Debar or Suspend, Chapter 126, subchapter 2, Hawaii Administrative Rules (HAR).

7.14.4 CONFLICT BETWEEN GENERAL CONDITIONS AND PROCUREMENT RULES - In the event of a conflict between the General Conditions and the Procurement Rules, the Procurement Rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.

#### 7.15 PATENTED ARTICLES, MATERIALS AND PROCESSES

7.15.1 If the Contractor desires to use any design, device, material, or process covered by letters of patent or copyright, the right for such use shall be procured by the Contractor from the patentee or owner. The Contractor shall defend, protect, indemnify and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including attorney' fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented design, patented device, patented process, patented appliance or patented material in connection with this Contract. The Contractor shall be solely responsible for correcting or curing to the satisfaction of the HHFDC any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the HHFDC a substitute article, design, device, process, appliance or material acceptable to the HHFDC; (b) paying royalties or other required payments to the patent holder; (c) obtaining proper authorizations or releases from the patent holder; and (d) furnishing such security to or making such arrangement with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

This section shall not apply to any article, design, device, material, appliance or process covered by letters of patent or copyright, which the Contractor is required to use by the Drawings or Specifications.

#### 7.16 SANITARY, HEALTH AND SAFETY PROVISIONS

7.16.1 The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements of the State and local boards of health, or other bodies or tribunals having jurisdiction. Unless otherwise stated in the drawings or specifications, the Contractor shall install toilet facilities conveniently located at the job site and maintain same in a neat and sanitary condition for the use of the employees on the job site for the duration of the Contract. The toilet facilities shall conform to the requirements of the State Department of Health. The cost of installing, maintaining and removing the toilet facilities shall be considered incidental to and paid for under various contract pay items for work or under the lump sum bids as the case may be, and no additional compensation will be made therefor. These requirements shall not modify or abrogate in any way the requirements or regulations of the State Department of Health.

7.16.2 Attention is directed to Federal, State and local laws, rules and regulations concerning construction safety and health standards. The Contractor shall not require any worker to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to their health or safety.

## 7.17 PROTECTION OF PERSONS AND PROPERTY

7.17.1 SAFETY PRECAUTIONS AND PROGRAMS - The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

7.17.1.1 All persons on the Work site or who may be affected by the Work;

7.17.1.2 All the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor and its subcontractors; and

7.17.1.3 Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavement, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

7.17.2 Contractor shall give notices and comply with applicable laws, ordinances, regulations, rules, and lawful orders of any public body having jurisdiction for the safety of persons or property or their protection from damage, injury or loss; and the Contractor shall erect and maintain reasonable safeguards for safety and protection, including posting danger signs, or other warnings against hazards.

7.17.3 The Contractor shall notify owners of adjacent properties and of underground (or overhead) utilities when performing work which may affect the owners; and shall cooperate with the owners in the protection, removal and replacement of their property.

7.17.4 All damage, injury or loss to any property referred to in paragraphs 7.17.1.2 and 7.17.1.3 caused by the fault or negligence or damage or loss attributable to acts or omissions directly or indirectly in whole or part by the Contractor a subcontractor or any one directly or indirectly employed by them, or by anyone for whose acts they might be liable, shall be remedied promptly by the Contractor.

7.17.5 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the protection of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor.

7.17.6 The Contractor shall not load or permit any part of the construction to be loaded so as to endanger its safety. The Contractor shall not injure or destroy trees or shrubs nor remove or cut them without permission of the Project Engineer. Contractor shall protect all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed.

7.17.7 In the event the Contractor encounters on the site, material reasonably believed to be asbestos or other hazard material that has not been rendered harmless, the Contractor shall

stop work in the area and notify the Project Engineer promptly. The work in the affected area shall be resumed in the absence of hazard materials or when the hazard has been rendered harmless.

**7.17.8 EMERGENCIES** - In an emergency affecting the safety and protection of persons or the Work or property at the site or adjacent thereto, Contractor without special instructions or authorization from the Project Engineer, shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Contractor shall give the Project Engineer prompt written notice of the emergency and actions taken. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined under the provisions of Section 7.25, DISPUTES AND CLAIMS.

#### **7.18 ARCHAEOLOGICAL SITES**

**7.18.1** Should historic sites such as walls, platforms, pavements and mounds, or remains such as artifacts, burials, concentration of charcoal or shells be encountered during construction, work shall cease in the immediate vicinity of the find and the find shall be protected from further damage. The Contractor shall immediately notify the Project Engineer and contact the State Historic Preservation Division which will assess the significance of the find and recommend the appropriate mitigation measures, if necessary.

**7.18.2** When required, the Contractor shall provide and install any temporary fencing to protect archaeological sites within the project. The fencing shall be installed prior to any construction activity and shall be maintained by the Contractor for the duration of the project. Fence installation and maintenance shall be to the satisfaction of the Project Engineer. The Contractor shall remove the fencing upon completion of construction, or as directed by the Project Engineer.

**7.18.3** No work shall be done within the temporary fencing area. If any construction work is done within the temporary fencing, the Contractor shall notify the Project Engineer immediately; and if the Contractor entered the archaeological site area without permission, it shall stop work in this area immediately. The Project Engineer shall notify the archaeologist to assess any damage to the area. The Contractor shall allow the archaeologist sufficient time to perform the field investigation.

**7.18.4** Any site requiring data recovery within the project shall not be disturbed until data recovery is completed.

#### **7.19 RESPONSIBILITY FOR DAMAGE CLAIMS; INDEMNITY**

**7.19.1** The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.

**7.19.2** The Contractor agrees that it will not attempt to hold the State and the Department, their officers, representatives, employees or agents, liable or responsible for any losses or

damages to third parties from the action of the elements, the nature of the work to be done under these Contract Documents or from any unforeseen obstructions, acts of God, vandalism, fires or encumbrances which may be encountered in the prosecution of the work.

7.19.3 The Contractor shall pay all just claims for materials, supplies, tools, labor and other just claims against the Contractor or any subcontractor in connection with this contract and the surety bond will not be released by final acceptance and payment by the Department unless all such claims are paid or released. The Department may, but is not obligated to, withhold or retain as much of the monies due or to become due the Contractor under this contract considered necessary by the Project Engineer to cover such just claims until satisfactory proof of payment or the establishment of a payment plan is presented.

7.19.4 The Contractor shall defend, indemnify and hold harmless the State and the Department, their officers, representatives, employees or agents from all suits, actions or claims of any character brought on account of any claims or amounts arising out of or recovered under the Workers' Compensation Laws or violation of any other law, by-law, ordinance, order or decree.

7.19.5 COST OF LITIGATION - In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.

## 7.20 CHARACTER OF WORKERS OR EQUIPMENT

7.20.1 The Contractor shall at all times provide adequate supervision and sufficient labor and equipment for prosecuting the work to full completion in the manner and within the time required by the contract.

7.20.2 Character and Proficiency of Workers - All workers shall possess the proper license and/or certification, job classification, skill and experience necessary to properly perform the work assigned to them. All workmen engaged in special work or skilled work, such as bituminous courses or mixtures, concrete pavement or structures, electrical installation, plumbing installation, or in any trade shall have sufficient experience in such work and in the operation of the equipment required to properly and satisfactorily perform all work. All workers shall make due and proper effort to execute the work in the manner prescribed in these Contract Documents, otherwise, the Project Engineer may take action as prescribed herein.

7.20.2.1 Any worker employed on the project by the Contractor or by any subcontractor who, in the opinion of the Project Engineer, is not careful and competent, does not perform its work in a proper and skillful manner or is disrespectful, intemperate, disorderly or neglects or refuses to comply with directions given, or is otherwise objectionable shall at the written request of the Project Engineer, be removed forthwith by the Contractor or subcontractor employing such worker and shall not be employed again in any portion of the work without the written consent of the Project Engineer. Should the Contractor or subcontractor continue to employ, or again employ such person or persons on the project, the Project Engineer may withhold all payments which are or may become due, or the Project Engineer may suspend the work until the Project Engineer's orders are followed, or both.

7.20.3 INSUFFICIENT WORKERS - A sufficient number of workers shall be present to ensure the work is accomplished at an acceptable rate. In addition, the proper ratio of apprentice to journey worker shall be maintained to ensure the work is properly supervised and performed. In the event that the Project Engineer finds insufficient workers are present to accomplish the work at an acceptable rate of progress or if a adequate number of journey workers are not present and no corrective action is taken by the Contractor after being informed in writing, the Executive Director may terminate the Contract as provided for under Section 7.27, TERMINATION OF CONTRACT FOR CAUSE.

7.20.4 EQUIPMENT REQUIREMENTS - All equipment furnished by the Contractor and used on the work shall be of such size and of such mechanical condition that the work can be performed in an acceptable manner at a satisfactory rate of progress and the quality of work produced will be satisfactory.

7.20.4.1 Equipment used on any portion of the project shall be such that no injury to the work, persons at or near the site, adjacent property or other objects will result from its use.

7.20.4.2 If the Contractor fails to provide adequate equipment for the work, the contract may be terminated as provided under Section 7.27, TERMINATION OF CONTRACT FOR CAUSE.

7.20.4.3 In the event that the Contractor furnishes and operates equipment on a force-account basis, it shall be operated to obtain maximum production under the prevailing conditions.

## 7.21 CONTRACT TIME

7.21.1 Time is of the essence for this Contract.

7.21.2 CALCULATION OF CONTRACT TIME - When the contract time is on a working day basis, the total contract time allowed for the performance of the work shall be the number of working days shown in the contract plus any additional working days authorized in writing as provided hereinafter. Refer to Article 1, DEFINITIONS for the definition of Working Day. The count of elapsed working days to be charged against contract time shall begin from the date of the Notice to Proceed and shall continue consecutively to the date of Project Acceptance determined by the Project Engineer. When the contract completion time is a fixed calendar date, it shall be the date on which all work on the project shall be completed. Maintenance periods are not included within the contract time unless specifically noted in the Contract Documents. Failure to complete the work by contract completion date shall not terminate the Contract.

## 7.21.3 MODIFICATIONS OF CONTRACT TIME (§3-125-4 HAR)

7.21.3.1 EXTENSIONS - For increases in the scope for work caused by alterations and additional work made under Section 4.2, CHANGES, the Contractor will be granted a time extension only if the changes increase the time of performance for the Contract. If the Contractor believes an extension of time is justified and is not adequately provided for in a Field Order, it must request the additional time sought in writing when the detailed cost breakdown required by Section 4.2, CHANGES, is submitted. The Contractor must show how the time of performance for the critical path will be affected and must also support the time extension request with schedules and statements from its subcontractors, suppliers, and/or

manufacturers. Compensation for any altered or additional work will be paid as provided in Section 4.2, CHANGES.

7.21.3.2 The Department may direct changes to the work at any time until the work is finally accepted. The issuance of a Field Order at any time may alter or modify the contract duration only by the days specified therein; or if not specified therein, for the days the critical path must be extended for the change. Additional time to perform the extra work will be added to the time allowed in the contract without regard to the date the change directive was issued, even if the contract completion date has passed. A change requiring time will not constitute a waiver of pre-existing Contractor delay.

7.21.4 DELAY FOR PERMITS - For delays beyond the control of the Contractor in obtaining necessary permits, one day extension for each day delay may be granted by the Project Engineer, provided the Contractor notifies the Project Engineer that the permits are not available, as soon as the delay occurs. Time extensions shall be the exclusive relief granted on account of such delays. No additional compensation will be paid for these time extensions.

7.21.5 DELAYS BEYOND CONTRACTOR'S CONTROL - For delays affecting the critical path caused by acts of God, or the public enemy, fire, unusually severe weather, earthquakes, floods, epidemics, quarantine restrictions, labor disputes, freight embargoes and other reasons beyond the Contractor's control, the Contractor may be granted an extension of time provided that:

7.21.5.1 The Contractor notifies the Project Engineer in writing within five (5) work days after the occurrence of the circumstances described above and states the possible effects on the completion date of the contract.

7.21.5.2 No time extension will be granted for weather conditions other than unusually severe weather occurrences, and floods.

7.21.5.3 The Contractor, if requested, submits to the Project Engineer within ten (10) work days after the request, a written statement describing the delay to the project. The extent of delay must be substantiated as follows:

- (a) State specifically the reason or reasons for the delay and fully explain in a detailed chronology the effect of this delay to the work and/or the completion date;
- (b) Submit copies of purchase order, delivery tag, and any other pertinent documentation to support the time extension request;
- (c) Cite the period of delay and the time extension requested; and
- (d) A statement either that the above circumstances have been cleared and normal working conditions restored as of a certain day or that the above circumstances will continue to prevent completion of the project.

7.21.5.4 Time extensions shall be the exclusive relief granted and no additional compensation will be paid the Contractor for such delays.



**7.21.6 DELAYS IN DELIVERY OF MATERIALS** - For delays in delivery of materials and/or equipment which occur as a result of unforeseeable causes beyond the control and without fault or negligence of the Contractor, its subcontractor(s) or supplier(s), the Contractor may be granted an extension of time provided it complies with the following procedures:

**7.21.6.1** The Contractor must notify the Project Engineer in writing within five (5) consecutive working days after it first has any knowledge of delays or anticipated delays and state the effects such delays may have on the completion date of the Contract.

**7.21.6.2** The Contractor, if requested, must submit to the Project Engineer within ten (10) working days after a firm delivery date for the material and equipment is established, a written statement as to the delay to the progress of the project. The delay must be substantiated as follows:

- (a) State specifically the reason or reasons for the delay. Explain in a detailed chronology the effect of this delay to the other work and / or the completion date;
- (b) Submit copies of purchase order(s), factory invoice(s), bill(s) of lading, shipping manifest(s), delivery tag(s) and any other pertinent correspondence to support the time extension request; and
- (c) Cite the start and end date of the delay and the days requested therefore. The delay shall not exceed the difference between the originally scheduled delivery date versus the actual delivery date.

**7.21.6.3** Time extensions shall be the exclusive relief granted and no additional compensation will be paid the Contractor on account of such delay.

**7.21.7 DELAYS FOR SUSPENSION OF WORK** - Delay during periods of suspension of the work by the Project Engineer shall be computed as follows:

**7.21.7.1** When the performance of the work is totally suspended for one (1) or more days (calendar or working days, as appropriate) by order of the Project Engineer in accordance with paragraphs 7.24.1.1, 7.24.1.2, 7.24.1.4 or 7.24.1.6 the number of days from the effective date of the Project Engineer's order to suspend operations to the effective date of the Project Engineer's order to resume operations shall not be counted as contract time and the contract completion date will be adjusted. Should the Contractor claim for additional days in excess of the suspension period, Contractor shall provide evidence justifying the additional time. During periods of partial suspensions of the work, the Contractor will be granted a time extension only if the partial suspension affects the critical path. If the Contractor believes that an extension of time is justified for a partial suspension of work, it must request the extension in writing at least five (5) working days before the partial suspension will affect the critical operation(s) in progress. The Contractor must show how the critical path was increased based on the status of the work and must also support its claim, if requested, with statements from its subcontractors. A suspension of work will not constitute a waiver of pre-existing Contractor delay.

**7.21.8 CONTRACTOR CAUSED DELAYS** - No time extension will be considered for the following:

7.21.8.1 Delays in performing the work caused by the Contractor, subcontractor and/or supplier;

7.21.8.2 Delays in arrival of materials and equipment caused by the Contractor, subcontractor and / or supplier in ordering, fabricating, delivery, etc.;

7.21.8.3 Delays requested for changes which the Project Engineer determines unjustifiable due to the lack of supporting evidence or because the change is not on the critical path;

7.21.8.4 Delays caused by the failure of the Contractor to submit for review and acceptance by the Project Engineer, on a timely basis, pricing proposals, shop drawings, descriptive sheets, material samples, color samples, etc. except as covered in subsection 7.21.5 and 7.21.6;

7.21.8.5 Failure to follow the procedure within the time allowed to qualify for a time extension; and

7.21.8.6 Days the Contractor is unable to work due to normal rainfall or other normal bad weather day conditions.

7.21.9 REDUCTION IN TIME - If the Department deletes any portion of the work, an appropriate reduction of contract time may be made in accordance with Section 4.2, CHANGES.

## 7.22 CONSTRUCTION SCHEDULE

7.22.1 The Contractor shall submit its detailed construction schedule to the Project Engineer prior to the start of the work. The purpose of the schedule is to allow the Project Engineer to monitor the Contractor's progress on the work. The schedule shall account for normal inclement weather, unusual soil or other conditions that may influence the progress of the work, schedules and coordination required by any utility, off or on site fabrications, and all other pertinent factors that relate to progress.

7.22.2 Submittal of and the Project Engineer's receipt of the construction schedule shall not imply the Department's approval of the schedule's breakdown, its individual elements, and any critical path that may be shown. Any acceptance or approval of the schedule: 1) shall be for general format only and not for sequences or durations thereon; and 2) shall not be deemed an agreement by the Department that the construction means, methods and resources shown on the schedule will result in work that conforms to the contract requirements. The Contractor has the risk of all elements (whether or not shown) of the schedule and its execution.

7.22.3 In the event the Contractor submits and the Department receives an accelerated schedule (shorter than the contract time), such will not constitute an agreement to modify the contract time or completion date, nor will the receipt, acceptance or approval of such a schedule incur any obligation by the Department. The Contractor shall be solely responsible for and shall accept all risks and any delays that may materialize during the construction work until the contract completion date is reached. The contract time or completion date is established for the benefit of the Department and cannot be changed without an appropriate change order issued by the Department. All float on an accelerated schedule belongs exclusively to the Department. The Department will not be responsible for or obligated to accept the work before the completion date established by the Contract.



7.23 STATEMENT OF WORKING DAYS - For all contracts on a working day basis, the Contractor will submit a statement of the number of working days for each month together with the Monthly Payment Application. The Monthly Payment Application will not be processed without the statement of working days.

7.24 SUSPENSION OF WORK (§3-125-7 HAR)

7.24.1 PROCEDURE TO BE FOLLOWED - The Executive Director may, by written order to the Contractor, at any time and without notice to any surety, suspend the performance of the Work either in whole or in part for any cause, including but not limited to:

7.24.1.1 Weather or excess bad weather days, considered unsuitable by the Project Engineer for prosecution of the work; or

7.24.1.2 Soil Conditions considered unsuitable by the Project Engineer for prosecution of the work; or

7.24.1.3 Failure of the Contractor to:

- (a) Correct conditions unsafe for the general public or for the workers;
- (b) Carry out orders given by the Project Engineer;
- (c) Perform the work in strict compliance with the provisions of the contract; or
- (d) Provide a qualified Superintendent on the jobsite as described under Article 5.9.2.

7.24.1.4 When any redesign is deemed necessary by the Project Engineer; or

7.24.1.5 Disturbance due to noise, odors or dust arising from the construction even if such disturbance does not violate the section on Environmental Protection contained in the Contract Documents; or

7.24.1.6 The convenience of the Department.

7.24.2 PARTIAL OR TOTAL SUSPENSION OF WORK - Suspension of work on some but not all items of work shall be considered a partial suspension. Suspension of work on the entire work at the job site shall be considered total suspension. The period of suspension shall be computed as set forth in Subsection 7.21.7, Delays for Suspension of Work.

7.24.3 PAYMENT

7.24.3.1 In the event that the Contractor is ordered by the Executive Director in writing as provided herein to suspend all work under the contract in accordance with paragraphs 7.24.1.4 or 7.24.1.6, the Contractor may be reimbursed for actual direct costs incurred on work at the jobsite, as authorized in writing by the Executive Director, including costs expended for the protection of the work. Payment for equipment which must standby during such suspension of work shall be made as described in clause 8.3.4.5.(e). No payment will be made for profit on

any suspension costs. An allowance of five percent (5%) will be paid on any reimbursed actual costs for indirect categories of delay costs, including extended branch and home-office overhead and delay impact costs.

7.24.3.2 However, no adjustment to the contract amount or time shall be made under this Section 7.24 for any suspension, delay, or interruption:

- (a) To the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or
- (b) For which an adjustment is provided for or excluded under any other provision of this Contract.

7.24.3.3 Any adjustment in contract price made pursuant to this subsection shall be determined in accordance with this Section 7.24 and Section 4.2, CHANGES.

7.24.3.4 Claims for such compensation shall be filed with the Project Engineer within ten (10) calendar days after the date of the order to resume work or such claims will be waived by the Contractor. Together with the claim, the Contractor shall submit substantiating documents supporting the entire amount shown on the claim. The Executive Director may make such investigations as are deemed necessary and shall be the sole judge of the claim and the Executive Director's decision shall be final.

7.24.4 CLAIMS NOT ALLOWED - No claim under this Section 7.24 shall be allowed:

7.24.4.1 For any direct costs incurred more than twenty (20) days before the Contractor shall have notified the Project Engineer in writing of any suspension that the Contractor considers compensable. This requirement shall not apply as to a claim resulting from a suspension order under paragraphs 7.24.1.4 or 7.24.1.6; and

7.24.4.2 Unless the claim is asserted in writing within ten (10) calendar days after the termination of such suspension, delay, or interruption, but in no case not later than the date of final payment under the contract.

7.24.4.3 No provision of this Section 7.24 shall be construed as entitling the Contractor to compensation for delays due to failure of surety, for suspensions made at the request of the Contractor, for any delay required under the Contract, for partial suspension of work or for suspensions made by the Project Engineer under the provisions of paragraphs 7.24.1.1, 7.24.1.2, 7.24.1.3 and 7.24.1.5.

7.25 DISPUTES AND CLAIMS (§3-126-31 HAR) - Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 126, Procurement Rules, as the same may be amended from time to time.

7.25.1 Required Notification - As a condition precedent for any claim, the Contractor must give notice in writing to the Project Engineer in the manner and within the time periods stated in Section 4.2, CHANGES for claims for extra compensation, damages, or an extension of time due for one or more of the following reasons:

7.25.1.1 Requirements not clearly covered in the Contract, or not ordered by the Project Engineer as an extra;

7.25.1.2 Failure by the Department and Contractor to agree to an Oral Order or an adjustment in price or contract time for a Field Order or a Change Order (which was not previously agreed on by a Field Order), issued by the Department;

7.25.1.3 An action or omission by the Project Engineer requiring performance changes beyond the scope of the Contract; and/or

7.25.1.4 Failure of the Department to issue a Field Order for controversies within the scope of Section 4.2, CHANGES.

7.25.1.5 For any other type of claim, the Contractor shall give notice within the time periods set forth in contract provisions pertaining to that event. If no specific contract provisions pertain to the claim, then the written notice of claim must be submitted within fifteen (15) days of the event giving rise to the claim.

7.25.2 CONTINUED PERFORMANCE OF WORK - The Contractor shall at all times continue with performance of the contract in full compliance with the directions of the Project Engineer. Continued performance by the Contractor shall not be deemed a waiver of any claim for additional compensation, damages, or an extension of time for completion, provided that the written notice of claim is submitted in accordance with subsection 7.25.1

7.25.3 The requirement for timely written notice shall be a condition precedent to the assertion of a claim.

7.25.4 REQUIREMENTS FOR NOTICE OF CLAIM -The notice of claim shall clearly state the Contractor's intention to make claim and the reasons why the Contractor believes that additional compensation, changes or an extension of time may be remedies to which it is entitled. At a minimum, it shall provide the following:

7.25.4.1 Date of the protested order, decision or action;

7.25.4.2 The nature and circumstances which caused the claim;

7.25.4.3 The contract provision(s) that support the claim;

7.25.4.4 The estimated dollar cost, if any, of the protested work and how that estimate was determined; and

7.25.4.5 An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption.

7.25.5 If the protest or claim is continuing, the information required in Subsection 7.25.4 above shall be supplemented as requested by the Project Engineer.

7.25.6 FINAL STATEMENT FOR CLAIM - The Contractor shall provide a final written statement of the actual adjustment in contract price and/or contract time requested for each notice of claim. Such statement shall clearly set forth that it is the final statement for that notice

of claim. All such final statements shall be submitted within thirty (30) days after completion of the work that is the subject of the claim, but in no event no later than thirty (30) days after the Project Acceptance Date or the date of termination of the Contractor, whichever comes first.

7.25.7 All claims of any nature are barred if asserted after final payment under this Contract has been made.

7.25.8 Contractor may protest the assessment or determination by the Project Engineer of amounts due the Department from the Contractor by providing a written notice to the Executive Director within thirty (30) days of the date of the written assessment or determination. Said notice shall comply with all requirements of subsections 7.25.4 and 7.25.6 above. The requirement of such notice cannot be waived and it is a condition precedent to any claim by the Contractor. Failure to comply with these notice provisions constitutes a waiver of any claim.

7.25.9 In addition to the requirements of subsections 7.25.4, 7.25.6, and 7.25.8, all final written statements of claim shall be certified. This certification requirement applies to the Contractor without exception, including, but not limited to, situations involving claims of subcontractors or suppliers which meet the requirements of subsection 5.13.4. The certification must be executed by a person duly authorized to bind the Contractor with respect to the claim. The certification shall state as follows:

7.25.9.1 "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Department is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

7.25.10 DECISION ON CLAIM/APPEAL - The decision of the Executive Director on the claim shall be final and conclusive, unless fraudulent, or unless the Contractor delivers to the Executive Director a written appeal of the Executive Director's decision. Said appeal shall be delivered to the Executive Director no later than thirty (30) days after the date of the Executive Director's decision.

7.25.10.1 In that event, the decision of the Executive Director shall be final and conclusive, unless fraudulent or unless the Contractor brings an action seeking judicial review of the Executive Director's decision in an appropriate circuit court of this State within six (6) months from the date of the Executive Director's decision.

7.25.11 PAYMENT AND INTEREST - The amount determined payable pursuant to the decision, less any portion already paid, normally should be paid without awaiting Contractor action concerning appeal. Such payments shall be without prejudice to the rights of either party. Interest on amounts ultimately determined to be due to a Contractor shall be payable at the Statutory rate applicable to judgments against the State under Chapter 662, HRS from the date of receipt of a properly certified final written statement of actual adjustment required until the date of decision; except, however, that if an action is initiated in circuit court, interest under this Section 7.25 shall only be calculated until the time such action is initiated. Interest on amounts due the Department from the Contractor shall be payable at the same rate from the date of issuance of the Project Engineer's notice to the Contractor. Where such payments are required to be returned by a subsequent decision, interest on such payments shall be paid at the statutory rate from the date of payment.

7.25.12 Contractor shall comply with any decision of the Executive Director and proceed diligently with performance of this contract pending final resolution by a circuit court of this State of any controversy arising under, or by virtue of, this Contract, except where there has been a material breach of contract by the Department; provided that in any event the Contractor shall proceed diligently with the performance of the Contract where the Project Engineer has made a written determination that continuation of work under the Contract is essential to the public health and safety.

7.25.13 **WAIVER OF ATTORNEY'S FEES** - In the event of any litigation arising under, or by virtue of, this Contract, the Contractor and the Department agree to waive all claims against each other for attorney's fees and agree to refrain from seeking attorney's fees as part of any award or relief from any court.

## **7.26 FAILURE TO COMPLETE THE WORK ON TIME**

7.26.1 Completion of the work within the required time is important because delay in the prosecution of the work will inconvenience the public and interfere with the Department's business. In addition, the Department will be damaged by the inability to obtain full use of the completed work and by increased engineering, inspection, superintendence, and administrative services in connection with the work. Furthermore, delay may detrimentally impact the financing, planning, or completion of other Department projects because of the need to devote Department resources to the project after the required completion date. The monetary amount of such public inconvenience, interference with Department business, and damages, is difficult, if not impossible, to accurately determine and precisely prove. Therefore, it is hereby agreed that the amount of such damages shall be the appropriate sum of liquidated damages.

7.26.1.1 When the Contractor fails to complete the Work or any portion of the Work within the time or times fixed in the contract or any extension thereof, it is agreed the Contractor shall pay liquidated damages to the Department in the amount of \$1,000 (one thousand dollars) per day, unless otherwise indicated in the Special Conditions.

7.26.1.2 If the Contractor fails to correct Punchlist deficiencies as required by Section 7.32, **PROJECT ACCEPTANCE DATE**, the Department will be inconvenienced and damaged, therefore, it is agreed that the Contractor shall pay liquidated damages to the Department based upon the amount stated in the General Requirements, Section 3.02. Liquidated damages shall accrue for all days after the Contract Completion Date or any extension thereof, until the date the Punchlist items are corrected and accepted by the Project Engineer.

7.26.1.3 If the Contractor fails to submit final documents as required by Section 7.33, **FINAL SETTLEMENT OF CONTRACT**, the Department will be inconvenienced and damaged, therefore, it is agreed that the Contractor shall pay liquidated damages to the Department in the amount stated in the General Requirements. Liquidated damages shall accrue for all days after the Contract Completion Date or any extension thereof, until the date the final documents are received by the Project Engineer.

7.26.1.4 The Project Engineer shall assess the total amount of liquidated damages in accordance with the amount of \$1,000 (one thousand dollars) per day, unless otherwise indicated in the Special Conditions, and provide written notice of such assessment to the Contractor.

**7.26.2 ACCEPTANCE OF LIQUIDATED DAMAGES** - The assessment of liquidated damages by the Project Engineer shall be accepted by the parties hereto as final, unless the Contractor delivers a written appeal of the Project Engineer's decision in accordance with subsection 7.25.10 requirements. Any allowance of time or remission of charges or liquidated damages shall in no other manner affect the rights or obligations of the parties under this contract nor be construed to prevent action under Section 7.27, TERMINATION OF CONTRACT FOR CAUSE. If the Department terminates the Contractor's right to proceed, the resulting damage will include such liquidated damages for such time as may be required for final completion of the work after the required contract completion date.

**7.26.3 PAYMENTS FOR LIQUIDATED DAMAGES** - Liquidated damages shall be deducted from monies due or that may become due to the Contractor under the contract or from other monies that may be due or become due to the Contractor from the Department.

**7.26.3.1** If the Contractor contests the per diem liquidated charge, the Department may elect to recover the actual damages caused by the Contractor's delay. Should the Department claim liquidated damages for delay and if such liquidated damages are disallowed for any reason, the Department shall recover the actual damages to which it is legally entitled as a result of the Contractor's delay or other breach.

## **7.27 TERMINATION OF CONTRACT FOR CAUSE (§3-125-18 HAR)**

**7.27.1 DEFAULT** - If the Contractor refuses or fails to perform the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in this contract, or any extension thereof, fails to complete the work within such time, or commits any other material breach of this contract, and further fails within seven (7) days after receipt of written notice from the Project Engineer to commence and continue correction of the refusal or failure with diligence and promptness, the Executive Director may, by written notice to the Contractor, declare the Contractor in breach and terminate the Contractor's right to proceed with the work or the part of the work as to which there has been delay or other breach of contract. In such event, the Department may take over the work and perform the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, the materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, the Contractor and the Contractor's sureties shall be liable for any damage to the Department resulting from the Contractor's refusal or failure to complete the work within the specified time.

**7.27.2 ADDITIONAL RIGHTS AND REMEDIES** - The rights and remedies of the Department provided in this contract are in addition to any other rights and remedies provided by law.

## **7.27.3 COSTS AND CHARGES**

**7.27.3.1** All costs and charges incurred by the Department, together with the cost of completing the work under contract, will be deducted from any monies due or which would or might have become due to the Contractor had it been allowed to complete the work under the contract. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay the Department the amount of the excess.

7.27.3.2 In case of termination, the Executive Director shall limit any payment to the Contractor to the part of the contract satisfactorily completed at the time of termination. Payment will not be made until the work has satisfactorily been completed and the tax clearance required by Section 8.8, FINAL PAYMENT is submitted by the Contractor. Termination shall not relieve the Contractor or Surety from liability for liquidated damages.

7.27.4 **ERRONEOUS TERMINATION FOR CAUSE** - If, after notice of termination of the Contractor's right to proceed under this Section 7.27, it is determined for any reason that good cause did not exist to allow the Department to terminate as provided herein, the rights and obligations of the parties shall be the same as, and the relief afforded the Contractor shall be limited to, the provisions contained in Section 7.28, TERMINATION FOR CONVENIENCE.

## 7.28 TERMINATION FOR CONVENIENCE (§3-125-22 HAR)

7.28.1 **TERMINATION** - The Executive Director may, when the interests of the Department so require, terminate this contract in whole or in part, for the convenience of the Department. The Executive Director shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

7.28.2 **CONTRACTOR'S OBLIGATIONS** - The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the Department's approval. The Executive Director may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the Department. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so.

7.28.3 **RIGHT TO CONSTRUCTION AND GOODS** - The Executive Director may require the Contractor to transfer title and delivery to the Department in the manner and to the extent directed by the Executive Director, the following:

7.28.3.1 Any completed work; and

7.28.3.2 Any partially completed construction, goods, materials, parts, tools, dies, jigs, fixtures, drawings, information, and contract rights (hereinafter called "construction material") that the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

7.28.3.3 The Contractor shall protect and preserve all property in the possession of the Contractor in which the Department has an interest. If the Executive Director does not elect to retain any such property, the Contractor shall use its best efforts to sell such property and construction material for the Department's account in accordance with the standards of section 490:2-706, HRS.

7.28.4 **COMPENSATION**



7.28.4.1 Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by subchapter 15, chapter 3-122, HAR. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Executive Director may pay the Contractor, if at all, an amount set in accordance with paragraph 7.28.4.3.

7.28.4.2 The Executive Director and the Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the Department, the proceeds of any sales of construction, supplies, and construction materials under paragraph 7.28.3.3 of this Section, and the contract price of the work not terminated.

7.28.4.3 Absent complete agreement, the Executive Director shall pay the Contractor the following amounts, less any payments previously made under the Contract.

- (a) The cost of all contract work performed prior to the effective date of the notice of termination work plus a five percent (5%) markup on the actual direct costs, including amounts paid to subcontractor(s), less amounts previously paid or to be paid for completed portions of such work; provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss. No anticipated profit or consequential damage will be due or paid.
- (b) Subcontractors shall be paid a markup of ten percent (10%) on their direct job costs incurred to the date of termination. No anticipated profit or consequential damage will be due or paid to any subcontractor. These costs must not include payments made to the Contractor for subcontract work during the contract period.
- (c) In any case, the total sum to be paid the Contractor shall not exceed the total contract price reduced by the amount of any sales of construction supplies, and construction materials.

7.28.4.4 Costs claimed, agreed to, or established by the Department shall be in accordance with chapter 3-123, HAR.

7.29 CORRECTING DEFECTS - If the Contractor fails to commence to correct any defects of any nature, within ten (10) working days after the correction thereof has been requested in writing by the Department, and thereafter to expeditiously complete the correction of said defects, the Project Engineer may without further notice to the Contractor or surety and without termination of contract, correct the defects and deduct the cost thereof from the contract price.

7.30 FINAL CLEANING - Before final inspection of the work, the Contractor shall clean all ground occupied by the Contractor in connection with the Work of all rubbish, excess materials, temporary structures and equipment, and all parts of the work must be left in a neat and presentable condition to the satisfaction of the Project Engineer. However, the Contractor shall not remove any warning and directional signs prior to the formal acceptance by the Project Engineer. Full compensation for final cleaning will be included in the prices paid for the various



items of work or lump sum bid, as the case may be, and no separate payment will be made therefor.

**7.31 SUBSTANTIAL COMPLETION AND FINAL INSPECTION** - Before the Department accepts the project as being completed, unless otherwise stipulated by the Project Engineer the following procedure shall be followed:

**7.31.1 SUBSTANTIAL COMPLETION**

**7.31.1.1** The Contractor and its subcontractors shall inspect the project to confirm whether the Project is Substantially Complete. This inspection effort shall include the testing of all equipment and providing a Punchlist that identifies deficiencies which must be corrected. Contractor shall make the corrections and if required repeat the procedure. Also, the Contractor shall schedule final Building, Plumbing, Electrical, Elevator, Fire and other required inspections and obtain final approvals.

- (a) When in compliance with the above requirements, the Contractor shall notify the Project Engineer in writing that project is Substantially Complete and ready for a Final Inspection. Along with the Substantial Completion notification, the Contractor shall provide its Punchlist(s) with the status of the deficiencies and dates when the deficiencies were corrected. The Project Inspector and / or the Project Engineer shall make a preliminary determination whether project is Substantially Complete.
- (b) If the Project is not Substantially Complete, the Project Engineer shall inform the Contractor. The Contractor shall identify deficiencies which must be corrected, update its Punchlist, make the necessary corrections and repeat the previous step. After completing the necessary work, the Contractor shall notify the Project Engineer in writing that Punchlist deficiencies have been corrected and the project is ready for a Final Inspection.
- (c) If the Project is Substantially Complete, the Project Engineer shall schedule a Final Inspection within fifteen (15) days of the Contractor's notification letter or as otherwise determined by the Project Engineer.

**7.31.1.2** In addition, and to facilitate closing of the project, the Contractor shall also proceed to obtain the following closing documents (where applicable) prior to the Final Inspection:

- (a) Field-Posted As-Built Drawings;
- (b) Maintenance Service Contract and two (2) copies of a list of all equipment;
- (c) Five (5) sets of operating and maintenance manuals;
- (d) Air conditioning test and balance reports; and
- (e) Any other final submittal required by the Contract.

**7.31.2 FINAL INSPECTION** - If at the Final Inspection the Project Engineer determines that all work is completed, the Project Engineer shall notify the Contractor in accordance with Section 7.32, PROJECT ACCEPTANCE DATE. Should there be remaining deficiencies which

must be corrected the Contractor shall provide an updated Punchlist to the Project Engineer, within five (5) days from the Final Inspection Date. The Contractor shall make the necessary corrections.

7.31.2.1 The Project Engineer shall confirm the list of deficiencies noted by the Contractor's punchlist(s) and will notify the Contractor of any other deficiencies that must be corrected before final settlement.

7.31.3 The Project Engineer may add to or otherwise modify the Punchlist from time to time. The Contractor shall take immediate action to correct the deficiencies.

7.31.4 **REVOKING SUBSTANTIAL COMPLETION** - At any time before final Project Acceptance is issued the Project Engineer may revoke the determination of Substantial Completion if the Project Engineer finds it was not warranted. The Project Engineer shall notify the Contractor in writing with the reasons and outstanding deficiencies negating the declaration. Once notified, the Contractor shall make the necessary corrections and repeat the required steps noted in subsections 7.31.1 and 7.31.2.

## 7.32 PROJECT ACCEPTANCE DATE

7.32.1 If upon Final Inspection, the Project Engineer finds that the project has been satisfactorily completed in compliance with the contract, the Project Engineer shall declare the project completed and accepted and will notify the Contractor in writing of the acceptance by way of the Project Acceptance Notice.

7.32.2 **PROTECTION AND MAINTENANCE** - After the Project Acceptance Date, the Contractor shall be relieved of maintaining and protecting the work except that this does not hold true for those portions of the work which have not been accepted, including Punchlist deficiencies. The Department shall be responsible for the protection and maintenance of the accepted facility.

7.32.3 The date of Project Acceptance shall determine:

7.32.3.1 End of Contract Time;

7.32.3.2 Commencement of all guaranty periods except as noted in Section 7.34, **CONTRACTOR'S RESPONSIBILITY FOR WORK: RISK OF LOSS**; and

7.32.3.3 Commencement of all maintenance services except as noted in Section 7.34, **CONTRACTOR'S RESPONSIBILITY FOR WORK: RISK OF LOSS**.

7.32.4 **PUNCHLIST REQUIREMENTS** – If a Punchlist is required under Section 7.31, **SUBSTANTIAL COMPLETION AND FINAL INSPECTION**, the Project Acceptance Notice will include the Project Engineer's Punchlist and the date when correction of the deficiencies must be completed.

7.32.5 Upon receiving the Punchlist, the Contractor shall promptly devote the required time, labor, equipment, materials and incidentals necessary to correct the deficiencies expeditiously.

7.32.6 For those items of work that cannot be completed by the established date, the Contractor shall submit a schedule in writing to the Project Engineer for approval along with documentation to justify the time required, no later than five (5) working days before the date stipulated for completion of the Punchlist work. A Proposed schedule submitted after the five (5) day period will not be considered.

7.32.7 **FAILURE TO CORRECT DEFICIENCIES** – After the Contract Completion Date, or any extension thereof, if the Contractor fails to correct the deficiencies within the established date or agreed to Punchlist completion date, the Project Engineer shall assess liquidated damages as required by Section 7.26, **FAILURE TO COMPLETE THE WORK ON TIME**.

7.32.8 If the Contractor fails to correct the deficiencies and complete the work by the established or agreed to date, the Department also reserves the right to correct the deficiencies by whatever method it deems necessary and deduct the cost from the final payment due the Contractor.

7.32.9 The Contractor may further be prohibited from bidding in accordance with Section 2.12, **DISQUALIFICATION OF BIDDERS**. In addition, assessment of damages shall not prevent action under Section 7.27, **TERMINATION OF CONTRACT FOR CAUSE**.

### 7.33 **FINAL SETTLEMENT OF CONTRACT**

7.33.1 The contract will be considered settled after the project acceptance date and when the following items have been satisfactorily submitted, where applicable:

7.33.1.1 Necessary Submissions in addition to the items noted under paragraph 7.31.1.2.

7.33.1.2 All written guarantees required by the contract.

7.33.1.3 Complete and certified weekly payrolls for the Contractor and its Subcontractor(s).

7.33.1.4 Certificate of Plumbing and Electrical Inspection.

7.33.1.5 Certificate of Building Occupancy.

7.33.1.6 Certificate for Soil Treatment and Wood Treatment.

7.33.1.7 Certificate of Water System Chlorination.

7.33.1.8 Certificate of Elevator Inspection, Boiler and Pressure Pipe installation.

7.33.1.9 All other documents required by the Contract.

7.33.2 **FAILURE TO SUBMIT CLOSING DOCUMENTS** – The Contractor shall submit the final Payment Application and the above applicable closing documents within sixty (60) days from the date of Project Acceptance or the agreed to Punchlist completion date. Should the Contractor fail to comply with these requirements, the Executive Director may terminate the Contract for cause. The pertinent provisions of Section 7.27, **TERMINATION OF CONTRACT FOR CAUSE** shall be applicable.

7.33.3 In addition, should the Contractor fail to furnish final closing documents within the required time period, the Project Engineer shall assess liquidated damages as required by Section 7.26, FAILURE TO COMPLETE THE WORK ON TIME.

#### 7.34 CONTRACTOR'S RESPONSIBILITY FOR WORK; RISK OF LOSS

7.34.1 Until the establishment of the Project Acceptance Date or Beneficial Occupancy, whichever is sooner, the Contractor shall take every necessary precaution against injury or damage to any part of the work caused by the perils insured by an All Risk policy, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore and make good all injuries or damage to any portion of the work occasioned by the perils insured by an All Risk policy before the date of final acceptance and shall bear the risk and expense thereof.

7.34.2 After the Project Acceptance Date or Beneficial Occupancy, whichever is sooner, the Contractor shall be relieved of maintaining and protecting the work except for those portions of the work which have not been accepted including Punchlist deficiencies.

7.34.3 The risk of damage to the work from any hazard or occurrence that may be covered by a required Property Insurance policy is that of the Contractor, unless such risk of loss is placed elsewhere by express language in the Contract Documents. No claims for any loss or damage shall be recognized by the Department, nor will any such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.

#### 7.35 GUARANTEE OF WORK

7.35.1 In addition to any required manufacturers warranties, all work and equipment shall be guaranteed by the Contractor against defects in materials, equipment or workmanship for one year from the Project Acceptance Date or as otherwise specified in the Contract Documents.

7.35.2 REPAIR OF WORK – If, within any guarantee period, repairs or changes are required in connection with the guaranteed work, which in the opinion of the Project Engineer is necessary due to materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract, the Contractor shall within five (5) working days and without expense to the Department commence to:

7.35.2.1 Place in satisfactory condition in every instance all such guaranteed work and correct all defects therein; and

7.35.2.2 Make good and repair or replace to new or pre-existing condition all damages to the building, facility, work or equipment or contents thereof, resulting from such defective materials, equipment or installation thereof.

7.35.3 MANUFACTURER'S AND INSTALLER'S GUARANTEE - Whenever a manufacturer's or installer's guarantee on any product specified in the respective Specification sections, exceeds one year, this guarantee shall become part of this contract in addition to the Contractor's guarantee. Contractor shall complete the guarantee forms in the name of the Department and submit such forms to the manufacturer within such time required to validate the

guarantee. Contractor shall submit to the Department a photocopy of the completed guarantee form for the Department's record as evidence that such guarantee form was executed by the manufacturer.

7.35.4 If a defect is discovered during a guarantee period, all repairs and corrections to the defective items when corrected shall again be guaranteed for the original full guarantee period. The guarantee period shall be tolled and suspended for all work affected by the defect. The guarantee period for work affected by the defect shall restart for its remaining duration upon confirmation by the Project Engineer that the deficiencies have been repaired or remedied.

#### 7.36 WORK OF AND CHARGES BY UTILITIES

7.36.1 The Contractor shall be responsible for scheduling and coordinating the work with the utility companies and applicable Governmental agencies for permanent service installation and connections or modifications to existing utilities. The Contractor shall make available all portions of the work necessary for the utility companies to do their work. The Department shall not bear the risk of any damage to the contract work caused by any utility company, and work of repairing such damage and delay costs must be resolved between the Contractor and the utility company and their insurers.

7.36.2 Unless stated as an allowance item to be paid by the Contractor, the Department will pay the utility companies and applicable governmental agencies directly for necessary modifications and connections. Contractor charges for overhead, supervision, coordination, profit, insurance and any other incidental expenses shall be included in the Contractor's Bid whether the utility is paid directly by the Department or by an allowance item in the Contract.

#### 7.37 RIGHT TO AUDIT RECORDS

7.37.1 The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor or prospective subcontractor which are related to the cost or pricing data, and a State contract, including subcontracts, other than a firm fixed-price contract. The books and records shall be maintained by the Contractor and subcontractor(s) for a period of four (4) years from the date of final payment under the Contract.

7.37.2 The Contractor shall insure that its subcontractors comply with this requirement and shall bear all costs (including attorney's fees) of enforcement in the event of its subcontractor's failure or refusal to fully cooperate.

7.37.3 Additionally, Sections 231-7, 235-108, 237-39 and other HRS chapters through reference, authorize the Department of Taxation to audit all taxpayers conducting business within the State. Contractors must make available to the Department of Taxation all books and records necessary to verify compliance with the tax laws.

#### 7.38 RECORDS MAINTENANCE, RETENTION AND ACCESS

7.38.1 The Contractor and any subcontractor whose contract for services is valued at \$25,000 (twenty five thousand) or more shall, in accordance with generally acceptable accounting practices, maintain fiscal records and supporting documents and related files, papers, and reports that adequately reflect all direct and indirect expenditures and management

and fiscal practices related to the Contractor and subcontractor's performance of services under this Contract.

7.38.2 The representative of the Department, the Executive Director, the Attorney General, (the Federal granting agency, the Comptroller General of the United States, and any of their authorized representatives when federal funds are utilized), and the Legislative Auditor of the State of Hawaii shall have the right of access to any book, document, paper, file, or other record of the Contractor and any subcontractor that is related to the performance of services under this Contract in order to conduct an audit or other examination and /or to make copies, excerpts and transcripts for the purposes of monitoring and evaluating the Contractor and subcontractor's performance of services and the Contractor and subcontractor's program, management, and fiscal practices to assure the proper and effective expenditure of funds and to verify all costs associated with any claims made under this Contract.

7.38.3 The right of access shall not be limited to the required retention period but shall last as long as the records are retained. The Contractor and subcontractor shall maintain and retain all books and records related to the Contractor and subcontractor's performance of services under this Contract, including any cost or pricing data for three (3) years from the date of final payment, except that if any litigation, claim, negotiation, investigation, audit or other action involving the books and records has been started before the expiration of the three (3) year period, the Contractor and subcontractors shall retain the books and records until completion of the action and resolution of all issues that arise from it, or until the end of the three (3) year retention period, whichever occurs later. Furthermore, it shall be the Contractor's responsibility to enforce compliance with this provision by any subcontractor.

7.39 COST OR PRICING DATA - Cost or pricing data must be submitted to the Agency purchasing officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for Contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

7.39.1 AUDIT OF COST OR PRICING DATA - When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

#### 7.40 CONFIDENTIALITY OF MATERIAL

7.40.1 All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.

7.40.2 All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

7.41 PUBLICITY - The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any State employee, including the head of the purchasing agency, the Chief Procurement Officer, the Director, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

7.42 OWNERSHIP RIGHTS AND COPYRIGHT - The STATE shall have complete ownership of all material, both finished and unfinished which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

7.43 GOVERNING LAW - The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

7.44 SEVERABILITY - In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.

7.45 WAIVER - The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract, shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE's right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the Procurement Rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE's rights or the CONTRACTOR's obligations under the Procurement Rules or statutes.

END OF ARTICLE 7



## **ARTICLE 8 - MEASUREMENT AND PAYMENT**

### **8.1 MEASUREMENT OF QUANTITIES**

8.1.1 All work completed under the Contract shall be measured by the Project Engineer according to United States standard measures, or as stated in this Contract. The method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the contract shall conform to good engineering practice. These measurements shall be considered correct and final unless the Contractor has protested same to the Project Engineer and has demonstrated the existence of an error by actual physical measurement before the work has progressed in a manner which would prohibit a proper check.

8.1.2 All measurements of the area of the various surfaces, pavement and base courses will be made in the horizontal projection of the actual surface and no deductions will be made for fixtures or structures having an area of nine (9) square feet or less. All measurements of headers, curbs, fences and any other type of construction which is to be paid for by its length will be made in the horizontal projection of the actual driven length from toe to top of cutoff, except where slope exceeds ten percent (10%) and for piles, which will be by actual length. All materials which are specified for measurement by the cubic yard "Loose Measurement" or "Measured in the Vehicle" shall be hauled in approved vehicles and measured therein at the point of delivery. Approved vehicles for this purpose may be of any type or size satisfactory to the Project Engineer, provided that the body is of such type that the actual contents may be readily and accurately determined. Unless all approved vehicles on a job are of a uniform capacity each approved vehicle must bear a plainly legible identification mark indicating the specific approved capacity. The Inspector may reject all loads not hauled in such approved vehicles.

8.2 NO WAIVER OF LEGAL RIGHTS - The Project Engineer shall not be precluded or estopped by any measurements, estimate or certificate made either before or after the completion and acceptance of the work and payment therefor, from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that any such measurement estimate or certificate is untrue or incorrectly made, or rejecting the work or materials that do not conform in fact to the contract. The Project Engineer shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor and its sureties such damages as the Department may sustain by reason of the Contractor's failure to comply with the terms of the Contract. Neither the acceptance by the Project Engineer or any representative of the Project Engineer, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, or any possession taken by the Project Engineer, shall operate as a waiver of any portion of the contract, or of any power herein reserved, or any right to damage herein provided. A waiver of any notice requirement or breach of the contract shall not be held to be a waiver of any other notice requirement or subsequent breach.

### **8.3 PAYMENT FOR ADDITIONAL WORK**

8.3.1 Additional work as defined in Section 4.2, CHANGES, when ordered, shall be paid for as defined in Section 4.4, PRICE ADJUSTMENT by a duly issued change order in accordance with the terms provided therein.



8.3.2 On credit proposals and proposals covering both increases and decreases, the application of overhead and profit shall be on the net change in direct costs for the performance of the work.

8.3.3 When payment is to be made for additional work directed by a Field Order, the total price adjustment as specified in the Field Order or if not specified therein for the work contained in the related change order shall be considered full compensation for all materials, labor, insurance, taxes, equipment use or rental and overheads, both field and home office including extended home and branch office overhead and other related delay impact costs.

8.3.4 **FORCE ACCOUNT METHOD** - When, for the convenience of the Department, payment is to be made by the Force Account method, all work performed or labor and materials and equipment furnished shall be paid for as described below. Payment by the Force Account method will not alter any rights, duties and obligations under the contract.

8.3.4.1 **LABOR** - For all hourly workers, the Contractor will receive the rate of wage including fringe benefits when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work, which shall be agreed upon in writing before beginning work for each and every hour that said labor is actually engaged in said work.

- (a) All markups for overhead and profit shall be added subject to limitations established in Section 4.5, ALLOWANCES FOR OVERHEAD AND PROFIT.
- (b) No allowance for overtime compensation will be given without the written approval of the Project Engineer prior to performance of such work.

8.3.4.2 **INSURANCE AND TAXES** - The Contractor and subcontractor(s) will also receive the actual additional costs paid for property damage, liability, worker's compensation insurance premiums, State unemployment contributions, Federal unemployment taxes, social security and Medicare taxes.

8.3.4.3 **MATERIALS** - For materials accepted by the Project Engineer and used, the Contractor and subcontractor(s) shall receive the actual cost of such materials delivered and incorporated into work, plus a markup allowed under Section 4.5, ALLOWANCES FOR OVERHEAD AND PROFIT.

8.3.4.4 **SUBCONTRACTORS** - Subcontractor costs shall be the actual costs of the subcontractor marked up as defined in this Section 8.3 plus a markup allowed under Section 4.5, ALLOWANCES FOR OVERHEAD AND PROFIT.

#### 8.3.4.5 **EQUIPMENT**

- (a) For machinery or special equipment (other than small tools as herein defined in clause 8.3.4.5.(h) owned or leased by the Contractor or a related entity, the use of which has been authorized by the Project Engineer:
  - (1) The Contractor will be paid at the per-hour rental rates based on the monthly rate established for said machinery or equipment in the then-current edition of the

Rental Rate Blue Book for Construction Equipment including the estimated operating cost per hour and regional correction provided therein.

- (2) If no rate is listed for a particular kind, type or size of machinery or equipment, then the monthly, hourly rates shall be as agreed upon in writing by the Contractor and the Project Engineer prior to the use of said machinery or equipment. If there is no agreement, the Project Engineer will set a rate. The Contractor may contest the rate pursuant to Section 7.25, DISPUTES AND CLAIMS.
  - (3) Rental rates which are higher than those specified in the aforesaid Rental Rate Blue Book publication may be allowed where such higher rates can be justified by job conditions such as work in water and work on lava, etc. Request for such higher rates shall be submitted in writing to the Project Engineer for approval prior to the use of the machinery or equipment in question.
- (b) For machinery or special equipment [other than small tools as herein defined in clause 8.3.4.5 (h)] rented by the Contractor or a related entity specifically for the Force Account work, the use of which has been authorized by the Project Engineer, the Contractor will be paid the actual rental cost for the machinery or equipment, including mobilization and demobilization costs. A receipt from the equipment supplier shall be submitted to the Project Engineer.
  - (c) For machinery or special equipment [other than small tools as herein defined in clause 8.3.4.5 (h)] rented by the Contractor or a related entity for use in the project, but which will also be used for the Force Account work, the use of which has been authorized by the Project Engineer, the Contractor will be paid the actual rental cost for the machinery or equipment. No additional mobilization and demobilization costs will be paid. A receipt from the equipment supplier shall be submitted to the Project Engineer.
  - (d) The rental rate for trucks not owned by the Contractor shall be those as established under the Hawaii State Public Utilities Commission, which will be paid for as an equipment item pursuant to paragraph 8.3.4.5. Rental rates for Contractor-owned trucks not listed in the Rental Rate Blue Book shall be agreed upon in writing by the Contractor and Project Engineer prior to the use of said trucks. If there is no agreement, the Project Engineer shall set the rate. The Contractor may contest the rate pursuant to Section 7.25, DISPUTES AND CLAIMS.
  - (e) The rental period shall begin at the time equipment reaches the site of work, shall include each day that the machinery or equipment is at the site of the work and shall terminate at the end of the day on which the equipment is no longer needed. In the event the equipment must standby due to work being delayed or halted by reason of design, traffic, or other related problems uncontrollable by the Contractor, excluding Saturdays, Sundays and Legal Holidays, unless the equipment is used to perform work on such days, the rental shall be two (2) hours per day until the equipment is no longer needed.
- (1) The rental time to be paid will be for the time actually used. Any hours or operation in excess of eight (8) hours in any one (1) day must be approved by the Project Engineer prior to the performance of such work.

- (2) Rental time will not be allowed or credited for any day on which machinery or equipment is inoperative due to its breakdown. On such days, the Contractor will be paid only for the actual hours, if any, that the machinery or equipment was in operation.
- (3) In the event the Force Account work is completed in less than eight (8) hours, equipment rental shall nevertheless be paid for a minimum eight (8) hours.
- (4) For the purpose of determining the rental period the continuous and consecutive days shall be the normal eight (8) hour shift work day, Monday through Friday excluding legal holidays. Any work day to be paid less than eight (8) hours shall not be considered as continuous, except for equipment removed from rental for fuel and lubrication.
- (5) No additional premium beyond the normal rates used will be paid for equipment over eight (8) hours per day or forty (40) hours per week.
- (f) All rental rates for machinery and equipment shall include the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs, maintenance, tire wear, depreciation, storage, and all other incidentals.
- (g) All machinery and equipment shall be in good working condition and suitable for the purpose for which the machinery and equipment is to be used.
- (h) Individual pieces of equipment or tools having a replacement value of \$2,000 (two thousand dollars) or less, whether or not consumed by use, shall be considered to be small tools and included in the allowed markup for overhead and profit and no separate payment will be made therefor.
- (i) The total of all Force Account rental charges accrued over the duration of the contract for a specific item of equipment shall not exceed the replacement cost of that equipment.
  - (1) The Contractor shall provide the cost of replacement to the Project Engineer prior to using the equipment. If the Project Engineer does not agree with the replacement cost, the Project Engineer shall set the replacement cost. The Contractor may contest the replacement cost pursuant to Section 7.25, DISPUTES AND CLAIMS.
- (j) Should the item of equipment be rented from an unrelated entity, the rental cost will be treated as an equipment cost under paragraph 8.3.4.5.
- (k) Transportation and/or Mobilization: The following provisions shall govern in determining the compensation to be paid to the Contractor for use of equipment or machinery on the Force Account method:
  - (1) The location from which the equipment is to be moved or transported shall be approved by the Project Engineer.

- (2) Where the equipment must be transported to the site of the Force Account work, the Department will pay the reasonable cost of mobilizing and transporting the equipment, including its loading and unloading, from its original location to the site of Force Account work. Upon completion of the work the Department will pay the reasonable cost of mobilizing and transporting the equipment back to its original location or to another location, whichever cost is less.
- (3) The cost of transporting the equipment shall not exceed the rates established by the Hawaii State Public Utilities Commission. If such rates are nonexistent, then the rates will be determined by the Project Engineer based upon the prevailing rates charged by established haulers within the locale.
- (4) Where the equipment is self-propelled, the Department will pay the cost of moving the equipment by its own power from its original location to the site of the Force Account work. Upon completion of the work the Department will pay the reasonable cost of moving of the Equipment back to its original or another location, whichever cost is less.
- (5) At the discretion of the Project Engineer, when the Contractor desires to use such equipment for other than Force Account work, the costs of mobilization and transportation shall be prorated between the Force Account and non- Force Account work.
- (l) Pickup trucks, vans, storage trailers, unless specifically rented for the Force Account work, shall be considered incidental to the Force Account work and the costs therefor are included in the markup allowed under Section 4.5, ALLOWANCES FOR OVERHEAD AND PROFIT.

**8.3.4.6 STATE EXCISE (GROSS INCOME) TAX AND BOND** - A sum equal to the current percentage rate for the State excise (Gross Income) tax on the total sum determined in paragraphs 8.3.4.1, 8.3.4.2, 8.3.4.3 and 8.3.4.4 above, and the bond premium shall be added as compensation to the Contractor. The actual bond premium not to exceed one percent (1%) shall be added to items covered by paragraphs 8.3.4.1, 8.3.4.2, 8.3.4.3 and 8.3.4.4 when applicable.

- (a) The compensation as determined in paragraphs 8.3.4.1, 8.3.4.2, 8.3.4.3, 8.3.4.4 and 8.3.4.5 above shall be deemed to be payment in full for work paid on a Force Account basis.

**8.3.4.7 RECORDS** - The Contractor and the Project Engineer shall compare records of the labor, materials and equipment rentals paid by the Force Account basis at the end of each day. These daily records, if signed by both parties, shall thereafter be the basis for the quantities to be paid for by the Force Account method. The Contractor shall not be entitled to payment for Force Account records not signed by the Project Engineer.

**8.3.4.8 STATEMENTS** - No payment will be made for work on a Force Account basis until the Contractor has submitted to the Project Engineer, duplicate itemized statements of the cost of such Force Account work detailed as follows:

- (a) Laborers - Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman and also the amount of fringe benefits payable if any.
- (b) Equipment - Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
- (c) Materials:
  - (1) Quantities of materials, prices and extensions.
  - (2) Costs of transporting materials, if such cost is not reflected in the prices of the materials.
  - (3) Statements shall be accompanied and supported by receipted invoices for all materials used and transportation charges. However, if materials used on the Force Account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices the Contractors shall submit an affidavit certifying that such materials were taken from stock and that the amount claimed represents the actual cost to the Contractor.
- (d) Insurance - Cost of property damage, liability and worker's compensation insurance premiums, unemployment insurance contributions, and social security tax.

#### **8.4 PROGRESS AND/OR PARTIAL PAYMENTS**

**8.4.1 PROGRESS PAYMENTS** - The Contractor will be allowed progress payments on a monthly basis upon preparing the Monthly Payment Application forms and submitting the originals to the Project Engineer. The monthly payment shall be based on the items of work satisfactorily completed and the value thereof at unit prices and/or lump sum prices set forth in the contract as determined by the Project Engineer and will be subject to compliance with Section 7.9, PAYROLLS AND PAYROLL RECORDS.

**8.4.1.1 ORIGINAL INVOICES REQUIRED** - All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.

**8.4.1.2 SUBJECT TO AVAILABLE FUNDS** - Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.

**8.4.2** In the event the Contractor or any Subcontractor fails to submit certified copies of payrolls in accordance with the requirements of Section 7.9, PAYROLLS AND PAYROLL RECORDS, the Project Engineer may retain the amount due for items of work for which payroll affidavits have not been submitted on a timely basis notwithstanding satisfactory completion of the work until such records have been duly submitted. The Contractor shall not be due any interest payment for any amount thus withheld.

**8.4.3 PARTIAL PAYMENT FOR MATERIALS** - The Contractor will also be allowed partial payments to the extent of ninety percent (90%) of the manufacturer's, supplier's, distributor's or

fabricator's invoice cost of accepted materials to be incorporated in the work on the following conditions:

8.4.3.1 The materials are delivered and properly stored at the site of the Work; or

8.4.3.2 For special items of materials accepted by the Project Engineer, the materials are delivered to the Contractor or subcontractor(s) and properly stored in an acceptable location within a reasonable distance to the site of the Work.

8.4.4 Partial payments shall be made only if the Project Engineer finds that:

8.4.4.1 The Contractor has submitted bills of sale for the materials or otherwise demonstrates clear title to such materials.

8.4.4.2 The materials are insured for their full replacement value to the benefit of the Department against theft, fire, damages incurred in transportation to the site, and other hazards.

8.4.4.3 The materials are not subject to deterioration.

8.4.4.4 In case of materials stored off the project site, the materials are not commingled with other materials not to be incorporated into the project.

8.4.5 **FEDERAL FUNDS** - If this Contract is payable in whole or in part from federal funds, Contractor agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the Contractor shall be paid only from such funds received from the federal government, and shall not be paid from any other funds.

## 8.5 PROMPT PAYMENT (§3-125-23 HAR)

8.5.1 Any money, other than retainage, paid to the CONTRACTOR shall be dispersed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and

8.5.2 Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

8.5.3 **BONA FIDE DISPUTES** - The existence of a bona fide dispute with a subcontractor or material supplier shall not release the Contractor of its prompt payment obligations as to all sums due that are not directly affected by such dispute.

8.5.4 **FILING NON-PAYMENT COMPLAINT** - Subcontractors and material suppliers may file in writing a complaint with the Executive Director regarding non-payment by the Contractor. Such complaint shall include:

8.5.4.1 The amount past due for work performed and already paid for by the Department;

8.5.4.2 That all the terms, conditions or requirements of its subcontract have been met; and

8.5.4.3 That no bona fide dispute over its performance exists. The Department will investigate the validity of the complaint.

8.5.5 The Department may withhold from future progress payments amounts to cover any sums paid to the Contractor for work performed by a subcontractor if the Department finds that the subcontractor complaint regarding non-payment by the Contractor has merit.

8.5.6 If the Project Engineer determines that the Contractor failed to make prompt payment required to a subcontractor or material supplier with whom it has no bona fide dispute, the Project Engineer shall inform the Contractor of the findings and request the Contractor make payment accordingly. If the Contractor does not act promptly, the Project Engineer shall take appropriate action as allowed under this Contract and / or refer the matter to the Contractor Licensing Board for appropriate action under Section 444-17, Hawaii Revised Statutes regarding the Revocation, Suspension and Renewal of (Contractor) Licenses and/or initiate a petition for debarment of the Contractor from bidding on other Department jobs.

## 8.6 RETAINAGE

8.6.1 The Department will retain five percent (5%) of the total amount of progress and / or partial payments until after completion of the entire Contract in an acceptable manner at which time this balance, less any previous payments, will be certified and paid to the Contractor. After fifty percent (50%) of the work is completed, and if progress is satisfactory, the Project Engineer at its sole discretion may elect not to withhold further retainage. If progress is not satisfactory, the Department may continue to withhold as retainage sums not exceeding five percent (5%) of the amount earned.

8.6.2 The retainage shall not include sums deducted as liquidated damages from monies due or that may become due the Contractor under the Contract.

8.6.3 Contractor may withdraw from time to time the whole or any portion of the sum retained after endorsing over to the Department and depositing with the Department any general obligation bond of the State or its political subdivisions suitable to the Department but in no case with a face value less than the value established by law of the amount to be withdrawn. The Department may sell the bond and use the proceeds therefrom in the same way as it may use monies directly retained from progress payments or the final payment.

8.7 WARRANTY OF CLEAR TITLE - The Contractor warrants and guarantees that all work and materials covered by progress or partial payments made thereon shall be free and clear of all liens, claims, security interests or encumbrances, and shall become the sole property of the Department. This provision shall not, however, be construed as an acceptance of the work nor shall it be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Department to require the fulfillment of all the items of the Contract.

8.7.1 LIENS AND WARRANTIES - Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

## 8.8 FINAL PAYMENT



8.8.1 Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

8.8.2 Sums necessary to meet any claims of any kind by the Department may be retained from the sums due the Contractor until said claims have been fully and completely discharged or otherwise satisfied.

8.9 STATE'S RIGHT TO OFFSET - The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other Contracts or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.

#### END OF ARTICLE 8



## GENERAL CONDITIONS

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## GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
  - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
  - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
  - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
  - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
  - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
  - h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
  - i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.
3. **Personnel Requirements.**
- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
  - b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.
4. **Nondiscrimination.** No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. **Conflicts of Interest.** The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.
6. **Subcontracts and Assignments.** The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.
- a. **Recognition of a successor in interest.** When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
    - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
    - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
    - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
  - b. **Change of name.** When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
  - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
- 7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
  - 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
  - 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
  - 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
  - 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
  - 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
    - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
  - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.



- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
  - (A) Contract prices for goods or services accepted under the Contract;
  - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
  - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:



- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures: Final Payment: Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
  - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
  - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
    - (A) Changes in the work within the scope of the Contract; and
    - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
  - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
  - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
  - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
  - g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
  - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
  - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Contract or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
  - (1) Description of performance (Attachment 1);
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
  - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
  - (5) Method of shipment or packing of supplies; or
  - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
  - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
  - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
  - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
  - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
  - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
  - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
  - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
  - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
  - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
  - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

- d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:



- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. **Records Retention.**

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.



**PART II**

**TECHNICAL SPECIFICATIONS**

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## TECHNICAL SPECIFICATIONS

### PART 1 - GENERAL REQUIREMENTS

#### 1.01 GENERAL PROVISIONS

- A. The General Conditions of the Contract and any Supplementary Conditions as agreed upon between the HHFDC and the Contractor are a part of this Contract and shall govern the Work.

#### 1.02 WORK COVERED BY THE CONTRACT DOCUMENTS

The Project consists of several work areas which are described in the Description of Areas, pages DA-1 to DA-27. The Work includes but is not limited to the following:

- A. Operation and maintenance of the irrigation and sprinkler system, to include equipment cleaning, adjustment, repair and replacement.
- B. Service and repair of electrical equipment appurtenant to the irrigation sprinkler system.
- C. Mowing, weeding, trimming around trees and signs, and edging of lawn areas; weeding, trimming and edging of ground covers; hedge trimming; removal of overgrowth.
- D. Fertilization, removal and replacement of palms, trees, shrubs, lawn areas, and ground covers.
- E. Pesticide application (herbicide, insecticide, fungicide, and other approved pesticide).
- F. Pruning of palms, trees and shrubs.
- G. Removal of leaves, trash and debris.
- H. Clearing gutters, swales and ditches.
- I. Maintenance of any additional area not described in the Description of Areas within the Villages of Kapolei incorporated into the Work, as agreed upon by HHFDC and the Contractor.

### 1.03 DESCRIPTION

- A. The Contractor shall furnish all supervision, licenses, transportation, labor, equipment and materials as necessary to perform all specified landscape maintenance tasks:
1. All equipment shall be of such type as to accurately and effectively perform the task intended and to cause no hazards or dangers to the properties, residents, and pedestrians of Kapolei while doing so. Equipment shall be maintained in good condition so as not to produce excessive noise or noxious fumes beyond normal function.
  2. All materials used shall be of such type and quality as to accurately and effectively perform as intended and shall do so without damage to the properties or danger to the tenants and pedestrians.
  3. All personnel employed by the Contractor shall be thoroughly and correctly trained by the Contractor. All personnel employed by the Contractor shall wear company uniforms at all times as supplied by the Contractor. The Contractor shall be responsible for all safety training of its employees and its subcontractors.
  4. The Contractor shall provide qualified supervision to direct all contracted personnel and maintenance operations at all times.
  5. All work shall be performed by trained, properly supervised personnel in accordance with the highest level of accepted landscape maintenance standards and horticultural practices. All chemicals will be applied by licensed personnel only. (See also Part 1.03, paragraph B.)
  6. Materials shall always be applied in strict accordance with manufacturer's directions. Where alternate products are available, the Contractor must present optional products to the HHFDC to compare environmental impacts of each product.
  7. Adequate personnel and equipment shall be provided to permit the timely completion of all operations.
  8. Rubbish and landscape debris such as clippings and trimmings shall be removed from the site at the end of each day at the Contractor's expense.

9. The Contractor shall submit a detailed monthly inspection or completion report for presentation to the HHFDC. This report is to document precisely all work performed, by specific location, for the HHFDC's records, including date, number of employee hours and all equipment and materials used. Progress payments may be withheld if the detailed monthly inspection reports are not submitted to HHFDC as required.
  10. The Contractor shall be responsible for the repair of any and all damages resulting from his or her activities while working on site. Such repair may consist of re-sodding affected areas and maintaining the areas until sod is established, replacement of plant material, irrigation repairs, etc. at no additional cost. If the Contractor is not able to make all required repairs, the HHFDC shall contract for the repairs necessary and deduct the costs from the Contractor's next month invoices.
  11. The Contractor shall provide and use all applicable safety and warning equipment including, but not limited to, temporary signage, lights, flagmen, etc., at all times while working on this contract. Any safety feature shall not be removed from the equipment. All vehicles must not exceed the posted speed limit and must obey all traffic laws and regulations.
  12. The Contractor shall provide a list of phone numbers of personnel who can be contacted in case of an emergency at the project site. The Contractor shall also provide personnel, equipment, and materials to repair or replace any damaged items of work. Work to be done in the event of an emergency shall conform to Paragraph 7.17.8 of the HHFDC General Conditions. The Contractor shall provide initial response to call-out within one hour of call-out, and have personnel on-site within three hours of initial notification.
- B. The Contractor shall adhere to the State Department of Health, State Department of Agriculture, and U.S. Department of Agriculture Regulations for Commercial Application of Pesticides.
1. All pesticide applicators shall be licensed or directly supervised by a licensed applicator. All licenses shall be for commercial application and shall be updated with the current category. Licensed applicator shall have training and experience in ornamental and turf pest control.
  2. The Contractor shall inform the HHFDC of the pesticides, herbicides, fungicides and other chemical applications to be used

prior to application. The Contractor shall submit copies of product data sheets, labels, and material safety data sheets of all chemical applications to be used to the Contracting Officer. The Contractor shall provide a minimum two weeks written notice prior to any chemical application.

3. Upon completion of each chemical application, the applicator shall record all information on a data sheet and submit on a monthly basis to the Contracting Officer.
- C. The Contractor shall be responsible for labor and materials used for maintenance:
1. All contracted personnel shall comply with the instructions pertaining to conduct and building regulations issued by duly appointed officials, such as building directors, inspectors, managers, guards, etc.
  2. All existing and new plant material shall be replaced at the Contractor's expense if the death or damage of the plant was caused by negligence or a direct act by the Contractor. Plant material shall be replaced by the HHFDC if the death or damage occurred outside of the Contractor's control. All replacement plant material shall be in excellent health and acclimated. It shall be of type and habit indicative of the species and shall be of the same size, type, and habit as the plant being replaced, unless otherwise determined by the HHFDC. The HHFDC reserves the right to select, examine, and inspect any and all replacement plant materials and to reject any material determined to be unacceptable.
- D. The maintenance personnel for the Contractor shall limit their activities to maintenance tasks only and shall not perform any installations at any time unless the Contractor has received approval from the HHFDC.
- E. The Contractor shall not perform work not called for in this Contract without the request and approval by the Director of HHFDC. Extras shall be submitted as a written proposal showing the itemized cost of labor, equipment, and materials.

#### 1.04 WORK BY OTHERS

- A. Work by others may be accomplished during the maintenance period. The Contractor shall permit access by other contractors and the HHFDC to the Project as may be required to complete their work. The Contractor shall coordinate with the other contractors (directly or through the

Contracting Officer) to determine when their work may be scheduled.

## **PART 2 - PRODUCTS**

### **2.01 HERBICIDES AND WEED CONTROL**

Use currently recommended and approved herbicides for weed control.

### **2.02 INSECTICIDES**

As noted in Part 3.04, insecticides shall be used in specific applications only. Use currently recommended and approved pesticides for pest control. Provide product label of insecticide, name of insect or pest, and plant material infested to Contracting Officer for review before applying insecticide.

### **2.03 SCREENED TOPSOIL**

Natural, fertile, friable soil free from stones, noxious seeds, weeds (especially nut grass), roots, and subsoil in any quantity. Red Humic Latasol soils, or types known as "Palolo Clay" or "Lualualei Clay" will not be accepted.

### **2.04 SOIL AMENDMENTS**

A. Organic Compost: ½" minus 'Menehune Mulch' distributed by Hawaiian Earth Products, Ltd.; or approved equal

B. Redwood Shavings: Nitrogen stabilized and passing through a 1/4" screen.

C. Cover Mulches

### **2.05 FERTILIZER**

A. General:

N-P<sub>2</sub>O<sub>5</sub>-K<sub>20</sub> analysis and ratio recommended by soil analysis and/or maintenance program, uniform in composition, free-flowing and suitable for application with approved equipment, delivered to the site in unopened container, each fully labeled, conforming to the applicable fertilizer laws, and bearing the name or mark of the manufacturer.

B. Maintenance Period: (Refer to the Villages of Kapolei Landscape Maintenance Requirements, Table 1)



## 2.06 SOIL ANALYSIS

The Contractor shall provide a soils analysis test consisting of five (5) samples twice a year for each of the following Areas: Area "C" (Kealanani Avenue), Area "D" (Kama'aha Avenue) and Area "J" (Bisecting Park), in accordance with the guidelines published by University of Hawaii at Manoa College of Tropical Agriculture & Human Resources (CTAHR). The CTAHR publication may be accessed on the internet through the following link:  
<http://www.ctahr.hawaii.edu/oc/freepubs/pdf/SCM-9.pdf>. The CTAHR publication is also available at HHFDC.

## 2.07 WATER:

Non-potable water to be used as required for irrigation purposes shall be furnished and paid for by the HHFDC.

## PART 3 - EXECUTION

### 3.01 INSPECTION

The Contractor will inspect the existing site conditions under which the Work will be performed. The Contractor shall not proceed until all unsatisfactory conditions have been corrected. The Contractor shall immediately notify the Contracting Officer of any discrepancies.

- A. Monthly inspections may be held at the Project site. The Contractor or its designated representative shall be present at each monthly inspection.
- B. At each monthly inspection, the Contractor shall have verified that all landscaped areas are free of weeds, neatly cultivated and raked. Lawns shall be neatly cut and all clippings removed.
- C. After each monthly inspection, if the HHFDC determines that all work has been performed in accordance with the specifications, the HHFDC shall confirm its acceptance of the work and shall process the monthly payment. If all or portions of the work are not acceptable under the terms and intent of the Specifications, the monthly payment may be withheld for that portion of the work until that work is completed or corrected to the satisfaction of HHFDC.

### 3.02 PROTECTION OF EXISTING PLANTS, IRRIGATION AND OTHERS

The Contractor shall be held responsible for all existing plants, irrigation systems and other landscape conditions and all work must be protected to the satisfaction

of the HHFDC.

### 3.03 GENERAL MAINTENANCE

General maintenance shall include but is not limited to watering, weeding (manual and chemical), fertilizing, mowing, edging, trimming, pruning, applying chemicals, adjusting and repairing irrigation system and picking up debris in all landscape areas as described in the Description of Areas. The Contractor shall maintain the areas in a neat and orderly manner. All clippings, branches, debris, and rubbish which are accumulated during the day by the Contractor shall be bagged and hauled immediately or at the end of the work day.

### 3.04 INSECT AND DISEASE MANAGEMENT

A. The Contractor shall be responsible for the detection, monitoring and controlling of all insects, diseases and plant problems. The Contractor shall be aware of the potential insect pests and diseases and shall make regular (at least weekly) and thorough inspections of all plant material and treat as necessary using products and methods that target the insect pest with minimal residue effects.

B. Disease Control:

Apply fungicides and other chemicals as required to control plant disease. (Refer to the Villages of Kapolei Landscape Maintenance Requirements, Table 1)

### 3.05 LANDSCAPE MAINTENANCE

A. Weed Control:

All planting areas shall be kept weed-free at all times. Weeds shall be uprooted and removed completely and in no case shall they be allowed to grow and propagate. Large holes caused by weeding shall be filled with screened topsoil and raked level. An appropriate and labeled pre-emergent herbicide may be applied only upon approval by the HHFDC. Contractor shall provide written notice to HHFDC at least two weeks in advance of any herbicide use. Post-emergent, non-selective contact herbicides shall not be used unless special circumstances warrant their use and the Contractor has approval from the HHFDC (i.e., on paved surfaces, sidewalks, etc.). Fill voids in landscaping created by weeding with replacement plants as specified per this Technical Specification paragraph 1.03.C.2.

**B. Clean-Up:**

All areas, including planting areas, plant materials, sidewalks, gutters, and paved areas shall be kept clean at all times. The Contractor shall remove and dispose of any and all trash including cigarette butts, sticks, natural debris such as soil, sand, rocks and gravel, withered flower buds, seed pods, leaves, etc. from all landscaped areas, including ground cover beds during every visit. All leaves and debris must be removed from all lawn and ground cover areas before mowing, including leaves, twigs, fruit and branches that drop.

**C. Pruning:**

In all pruning operations, be sure that cuts are flush with the branch or trunk from which they are removed. When pruning, always make the major cuts first, and then even-up the remaining plant. Use a thinning technique when removing the older growth from the base of the plant and be careful not to make all the cuts on one side of the plant. Remove the older branches at evenly spaced intervals, so that when pruning is finished, the plant will still retain its natural graceful shape. When the base pruning is finished, the plant will still retain its natural graceful shape. When the base pruning has been completed, it may be necessary to remove a few small branches at the top, and occasional larger branches to keep the plant in good form.

1. Shrubs: All woody plants massed in beds and not pruned into a hedge shall be hand-pruned using a thinning technique to maintain the natural habit indicative of the species. Cuts shall be made above an out-facing bud or branch and all cuts shall be hidden. Shrubs shall be pruned by hand as necessary to maintain a neat and trim appearance. Shrubs such as Bougainvillea and Hibiscus should be pruned with shears to establish and maintain a uniform coverage and height. Groundcover shall be maintained 4" - 6" away from the trunks of all trees and shrubs at all times.
2. Hedges: Hedges shall be maintained at an exact and equal height for the entire length of the hedge and shall be shaped with the bottom of the hedge slightly wider than the top.
3. Trees: Trees shall be pruned in accordance with landscape industry standards and guidelines published by the University of Hawaii at Manoa, College of Tropical Agriculture and Human Resources ("CTAHR"). Structural pruning of all trees shall only be performed after notifying the HHFDC to discuss type of pruning,

percent of canopy to be reduced and maximum cut size. The CTAHR publication may be accessed on the internet through the following link: <http://www.ctahr.hawaii.edu/oc/freepubs/pdf/L-8.pdf>. The CTAHR publication is also available at HHFDC. No tree shall be pruned more than 50% of the existing tree cover, unless otherwise directed by HHFDC.

4. Any trees or shrubs that are pruned contrary to these specifications to the point that aesthetic damage is suffered and/or the health of the plants is jeopardized, shall be replaced entirely at the Contractor's expense with plants of equal size and character.
5. All coconut palm fruits to be removed at least once every four months. Coconuts larger than 2" and hanging fronds from palm trees shall be immediately removed.
6. The Contractor shall trim and prune street trees which are overgrown or are in direct conflict with pedestrian and vehicular traffic upon notification by HHFDC. The Contractor shall be required to obtain knowledge of the species of street trees to be pruned, taking into account the characteristics of the trees, and shall prune the trees accordingly. Most street tree species planted within the villages are as follows:
  - a. Autograph tree
  - b. Allspice
  - c. Fern tree
  - d. Fiddlewood
  - e. Formosan koa
  - f. Jack-in-the-box
  - g. Kou haole
  - h. Kou, true
  - i. Madagascar olive
  - j. Milo
  - k. Pink tecoma
  - l. Queen palm
  - m. Silver buttonwood
  - n. Silver trumpet
  - o. Tulipwood
  - p. Upright bottlebrush
  - q. Wilhemina Tenney

- D. Mowing: (Refer to the Villages of Kapolei Landscape Maintenance Requirements, Table 1)

**E. Repairing and Re-grassing of Turf areas:**

When any portion of the surface becomes gullied or otherwise damaged and grass has failed to grow, such areas shall be repaired with screened topsoil and replanted with grass. Any area of one foot square or more in which grass has failed to grow after 30 days of maintenance shall be re-grassed.

**3.06 FREQUENCY OF MAINTENANCE**

The Contractor shall perform the work required to maintain the areas complete and in a neat manner in accordance to the minimum frequency noted in the table below. In the event that the areas have not been maintained properly in accordance with the Contract Documents, the minimum frequency shall be used as the basis for contract sum deductions for the non-conforming areas. All manual irrigation shall be turned on and off and be operated on a daily basis.

AREA DESCRIPTION	AREA (Acres)	Period	Minimum Frequency per Period
Areas "A" and "B" (Entries at Kealanani Avenue and Kama'aha Avenue)	1.0 ac	Monthly	twice
Areas "C" and "D" (Interior Roads Right-of Ways, Entries and Common Areas: Kealanani Avenue, Kama'aha Avenue, Kama'aha Loop, Kumu Iki Street & Kaiau Avenue)	8.0 ac	Monthly	twice
Area "E" (Northwest Corner)	26.0 ac	Monthly	once
Area "F" (Vacant 9.12 acres in Village 8) and Area "G" (Day Care Center Site)	9.80 ac	Monthly	once
Area "H" (Farrington Highway Shoulder-Makai)	0.5 ac	Monthly	twice
Area "I" (Fort Barrette Road Shoulder)	1.6 ac	Monthly	once
Area "J" (Bisecting Park)	2.4 ac	Monthly	four times
Area "K" (Kama'aha Avenue median at Village 7) and Area "L" (Kapolei Parkway)	7.0 ac	Monthly	twice
Area "R" (Kuloa Avenue medians) and Area "S" (Kowelo Avenue, Kolili Street, Kowelo Avenue Entry, Oahehe Way and Kolili Place Landscaped common area lots)	1.2 ac	Monthly	twice

Total Acreage:	63.35 ac
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### 3.07 TRIMMING OF STREET TREES WITHIN MAJOR ROADS

The quantities shown in the table below indicate the number of street trees in the major backbone roads and medians which shall be the basis for the bid. All trees within the limits of each area described in the Description of Areas shall be treated as a group. Coconut and palm trees within the landscape areas are included in the maintenance but are not listed in the table below. The table below does not include street trees within the minor street frontages of residences within Villages 1, 2, 3, and 4, 5, and 7, which are covered under Section 3.08.

AREA DESCRIPTION	NUMBER OF TREES
Areas "A" and "B" (Entries at Kealanani Avenue and Kama'aha Avenue)	palms; 10
Areas "C" and "D" (Interior Roads Right-of Ways and Common Areas: Kealanani Avenue, Kama'aha Avenue, Kama'aha Loop, Kumu Iki Street & Kaiau Avenue)	320
Area "J" (Bisecting Park)	13 monkeypods; palms
Area "L" (Kapolei Parkway)	7
Area "R" (Kuloa Avenue) and Area "S" (Kowelo Avenue, Kolili Street, Kowelo Avenue Entry, Oaheae Way and Kolili Place Landscaped common area lots)	171

### 3.08 TRIMMING OF STREET TREES WITHIN MINOR ROADS

Street tree trimming within the planting strip of minor roads within each Village shall be performed on an individual tree basis based upon the growth and spread of the tree. HHFDC shall identify these trees for the Contractor at which time the Contractor shall trim and prune trees. The price for each tree shall be charged on an individual basis at the unit price indicated in the Bid Schedule.

### 3.09 MAINTENANCE OF IRRIGATION SPRINKLER SYSTEM

The irrigation system consists of all irrigation sprinkler systems which irrigate the properties identified in the Description of Areas. Irrigation repair work shall be performed or supervised by a person with a C-27 or a C-37B specialty contractor license. Irrigation work covered by the contract documents are as

follows:

- A. Provide maintenance of irrigation sprinkler systems in the areas identified in the Description of Areas. The Contractor will inspect the existing irrigation system and immediately notify HHFDC of any discrepancies.
- B. Maintenance of the irrigation system includes, but is not limited to, inspection and adjustment of irrigation valves, sprinkler heads, backflow prevention devices, automatic controller and enclosure, and rain sensor. Contractor shall adjust sprinkler heads to minimize overspray onto the roadway pavement. Sprinkler heads shall be directed toward the landscaped areas irrigated by the irrigation system.
- C. The irrigation system shall be inspected on a daily basis to determine the rate of damage or vandalism to the irrigation system. The daily inspection shall involve identifying any visible water leak, cleaning and locating damaged sprinkler heads. Sprinkler adjustments shall be made accordingly. A monthly test of the automatic irrigation system shall also be conducted to include setting the manual test mode for each irrigation controller to verify the proper operation of the irrigation control valves and the sprinklers within the irrigation zone. The Contractor shall identify any electrical fault found during this inspection. The Contractor shall submit a monthly irrigation report summarizing the daily inspection and the monthly test runs, as well as any repairs made during the month. Progress payments may be withheld if monthly irrigation reports are not submitted to HHFDC.
- D. Replacement of irrigation equipment shall be of the same manufacturer and model. Any substitution of products shall require written approval of HHFDC. Replacement of faulty or damaged irrigation equipment, valves, pipes, and sprinkler parts, not attributed to the Contractor's negligence or improper care, will be charged, itemized and paid for under the appropriate allowance line item of the Contract. The Contractor shall provide appropriate invoices and labor charges to support any payment under the irrigation system and equipment repair allowance.
- E. Re-use water generated by the Board of Water Supply may replace the existing water drawn from the caprock aquifer below. In such event, Contractor shall comply with the requirements of the Department of Health for the operation of the irrigation system.
- F. Payment for maintenance of the irrigation system, which include the daily inspection, sprinkler adjustments and the monthly test runs shall not be paid for directly, but shall be included in the price of each area identified in

the Description of Areas.

3.10 MAINTENANCE OF UNIMPROVED AREAS

Maintain existing vegetation to a maximum height of 3 inches. Remove all scrub brush larger than 6" in height. Remove all debris and trash from the unimproved areas, including debris and trash placed on site through illegal dumping. All debris and trash collected shall be properly disposed of at an approved landfill. Additional compensation for debris and trash disposal shall not be paid for directly, but shall be included in the monthly price for the maintenance of the unimproved areas.



**PART III**  
**DESCRIPTIONS OF AREAS**

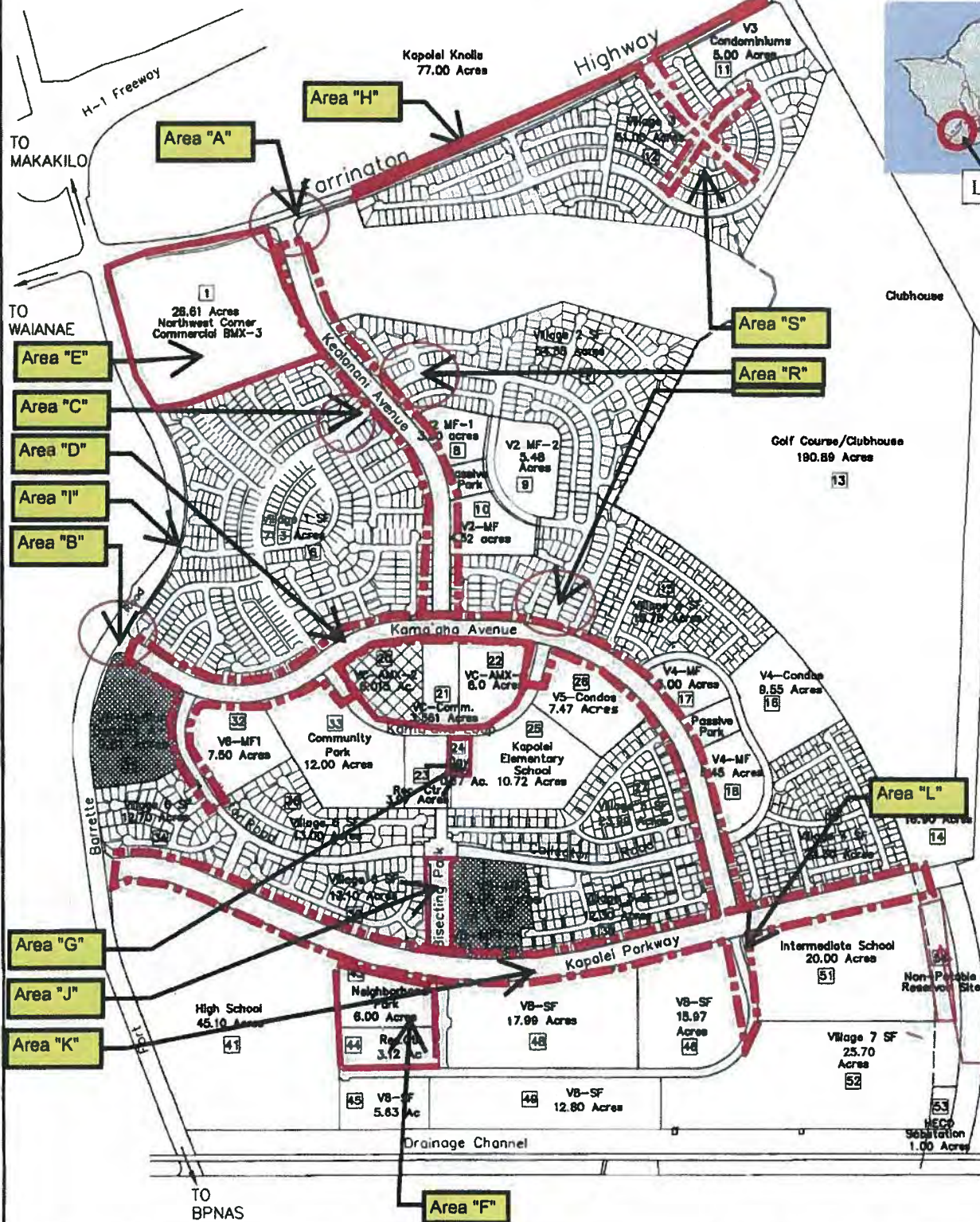
# LEGEND:

PARCEL BOUNDARY

TO HONOLULU



LOCATION



## VILLAGES OF KAPOLEI

GENERAL SITE LOCATION MAP  
- Not to Scale -

Villages of Kapolei -  
Landscape Maintenance

## VILLAGES OF KAPOLEI DESCRIPTION OF AREAS

Landscape and General Maintenance shall be performed as required in these Specifications and shall be limited to the areas described herein and as noted in General Site Location Map (Figure 1), except as modified in writing by HHFDC. The total estimated aggregate area of the areas described below is 64 acres.

### Areas "A" and "B" (Entries at Kealanani Avenue and Kama'aha Avenue):

- 1) Area "A" - Kealanani Entry. This area consists of the landscaped parcels on both sides of the entry to Kealanani Avenue from Farrington Highway. (See Figure 2). This area is irrigated automatically, with the irrigation controller located on the west side of the entry.
- 2) Area "B" - Kama'aha Entry. This area consists of the landscaped parcels on both sides of the entry to Kama'aha Avenue from Fort Barrette Road. (See Figure 3). This area is irrigated automatically, with the irrigation controller located on the north side of the entry.

### Areas "C" and "D" (Interior Roads Right-of-Ways and Common Areas):

- 1) Area "C" - Kealanani Avenue. This area consists of the landscaped median within the proposed City and County of Honolulu rights-of-way, the landscaped strip between the curb and the sidewalk, and the landscaped strip between the sidewalk and the perimeter wall on each side of the roadway. (See Figure 4). This area is approximately 2.9 acres. Where there is no wall, the landscaped strip on each side of the rights-of-way shall be measured from the outermost edge of the sidewalk to a distance of 13' away from the sidewalk. This area is irrigated automatically with the irrigation controller located near Farrington Highway.
- 2) Area "C" - Kumu Iki Street Entry "A". This area also includes the landscaped lots on both sides of the entry to Kumu Iki Street from Kealanani Avenue. (See Figure 4A). *This area is irrigated automatically with battery-operated irrigation valves.*
- 3) Area "D" - Kama'aha Avenue. This area consists of the landscaped median within the proposed City and County of Honolulu rights-of-way, the landscaped strip between the curb and the sidewalk, and the landscaped strip between the sidewalk and the perimeter wall on each side of the roadway. This area is approximately 4.8 acres. Where there is no wall, the landscaped strip on each side of the rights-of-way shall be measured from the outermost

edge of the sidewalk to a distance of 13' away from the sidewalk. (See Figure 4). This area is irrigated automatically with the controllers located on the north side Kama'aha Avenue on both corners of the Kealanani Avenue and Kama'aha Avenue intersection.

- 4) Area "D" -Kama'aha Loop. This area includes two landscaped medians within the proposed City and County rights-of way at the intersection of Kama'aha Avenue and Kama'aha Loop. (See Figure 4). *The landscaped medians are irrigated automatically with battery-operated irrigation valves located in the medians.*
- 5) Area "D" - Kumu Iki Street Entry "B". This area also includes the landscaped lots on both sides of the entry to Kumu Iki Street from Kama'aha Avenue. (See Figure 4B).
- 6) Area "D" - Kaiau Avenue. This area also includes the triangular parcel in front of the Pae Ko Gardens perimeter wall at the entry to Kaiau Avenue from Kama'aha Avenue, and the median within the Kaiau Avenue roadway rights-of-way. (See Figure 4C.) This area is not irrigated.

#### Area "E" (Northwest Corner):

This area consists of approximately 26 acres bounded by Farrington Highway to the north, the Kumu Iki subdivision wall to the south, Kealanani Avenue to the east, and Fort Barrette Road to the west. This area includes landscaping shrubs along the Farrington Highway makai shoulder. (See Figure 5). This area is irrigated automatically by 30 remote control valves and pop-up rotor sprinkler heads with the controller located at the west side of the Kealanani entry.

#### Area "F" (Vacant 9.12 acres in Village 8)

Vacant parcel in Village 8. This area consists of approximately 9.12 acres bounded by Kapolei Parkway to the north and Puainako Street to the east and Kapolei High School to the west. (See Figure 5). The area is not irrigated.

#### Area "G" (Day Care Center Site):

Day Care Center Site. This area consists of approximately .7 acre of unimproved lot situated between the Kapolei Elementary School and the Kapolei Recreation Center. (See Figure 5). This area is not irrigated. This parcel is in process of being turned over to developer for construction.

Area "H" (Farrington Highway Shoulder - Makai):

This area consists of approximately 0.5 acre of landscaped area on the makai shoulder of Farrington Highway, between Kealanani Avenue and the Kapolei Golf Course Road and is bounded by the concrete sidewalk and the perimeter wall. (See Figure 6). Landscaping consists mainly of wax leaf ficus shrubs and common zoysia el-toro grass. Zoysia el toro grass begins from Papaiaulu Avenue and ends at the Kapolei Golf Course Entrance.

Area "I" (Fort Barrette Road Shoulder):

- (1) Area "I" - Fort Barrette Road Shoulder (Kumu Iki Wall). This area parallels Fort Barrette Road and bounded by the roadway pavement and the subdivision wall. This area extends from the northernmost corner of the subdivision wall to the southernmost corner of the subdivision wall. This area is generally unimproved. This area does not include the entry way at Area "B". (See Figure 7).
- (2) Area "I" - Fort Barrette Road Shoulder (Village 6/Elderly). This area parallels Fort Barrette Road, which begins from Kama'aha Avenue and extends to Kapolei Parkway. This area is 10 feet wide, beginning from the edge of the wall and extends ten feet into the shoulder. Where there is no wall, the area shall begin from the edge of the pavement and extend ten feet into the shoulder. This area is generally unimproved. This area does not include the entry feature at Area "B". (See Figure 7A).

Area "J" (Bisecting Park):

This area consists of approximately 2.4 acres of landscaped area (including seashore paspalum), bounded by Villages 5, Village 6, Kapolei Parkway, and Kaiau Avenue. (See Figure 8). This area is irrigated automatically with two irrigation controllers within its limits.

Area "K" (Kapolei Parkway):

This area consists of all medians and shoulders of Kapolei Parkway, from the intersection of Ft. Barrette Road to the start of the bridge over drainage channel (by maintenance yard, Area "T"), and includes the shoulder areas approximately 13 feet from the edge of the sidewalk. (See Figure 9 and Figure 9A). This area is neither irrigated nor landscaped, except for a few monkeypod trees in the median. This area consists of approximately 3.5 acres of sloped or unimproved future landscape strips about 13 feet behind the sidewalk and approximately 3.4 acres of ungrassed median and ungrassed planting strip between the sidewalk and the roadway curb. This



area is not irrigated, except for the 7 monkeypod trees in the median, which are manually irrigated.

Area "L" (Portion of Kama'aha Avenue by Kapolei Middle School):

This area consists of all landscaping within the Kama'aha Avenue roadway right-of-way adjacent to the Kapolei Middle School southern boundary, including the shoulder and median strips. (See Figure 10). This area is irrigated automatically with battery-operated irrigation valves in the median and Kapolei Parkway.

Areas "R" and "S" (Rights-of Ways and Common Areas):

- (1) Area "R" - Kuloa Avenue Medians. This area consists mainly of the landscaped medians on Kuloa Avenue, which includes shrubs, ground cover, and grass (See Figures 11a and 11b). The medians on Kuloa Avenue are irrigated automatically by irrigation controllers located at the Villages of Kapolei Association's landscaped entry lots at each end of Kuloa Avenue.
- (2) Area "S" - Kowelo Avenue Entry, Kowelo Avenue Median and shoulders, Kolili Street and Common Area Lots at Oaheha Way and Kolili Place: This area consists of the entire Kowelo Avenue Roadway rights-of-way, certain planter strips and grassed strips on Kolili Street, Kowelo Avenue Entry and median, adjacent landscape lots on Oaheha Way and Kolili Place. The landscaped common area lots on Oaheha Way and Kolili Place are situated on the opposite side of the Kowelo Avenue Entry walls. (See Figures 12a to 12d). This area excludes planter strips which are adjacent to residential driveways. This area is irrigated automatically by a controller located at the east side of the Kowelo Entry lot.

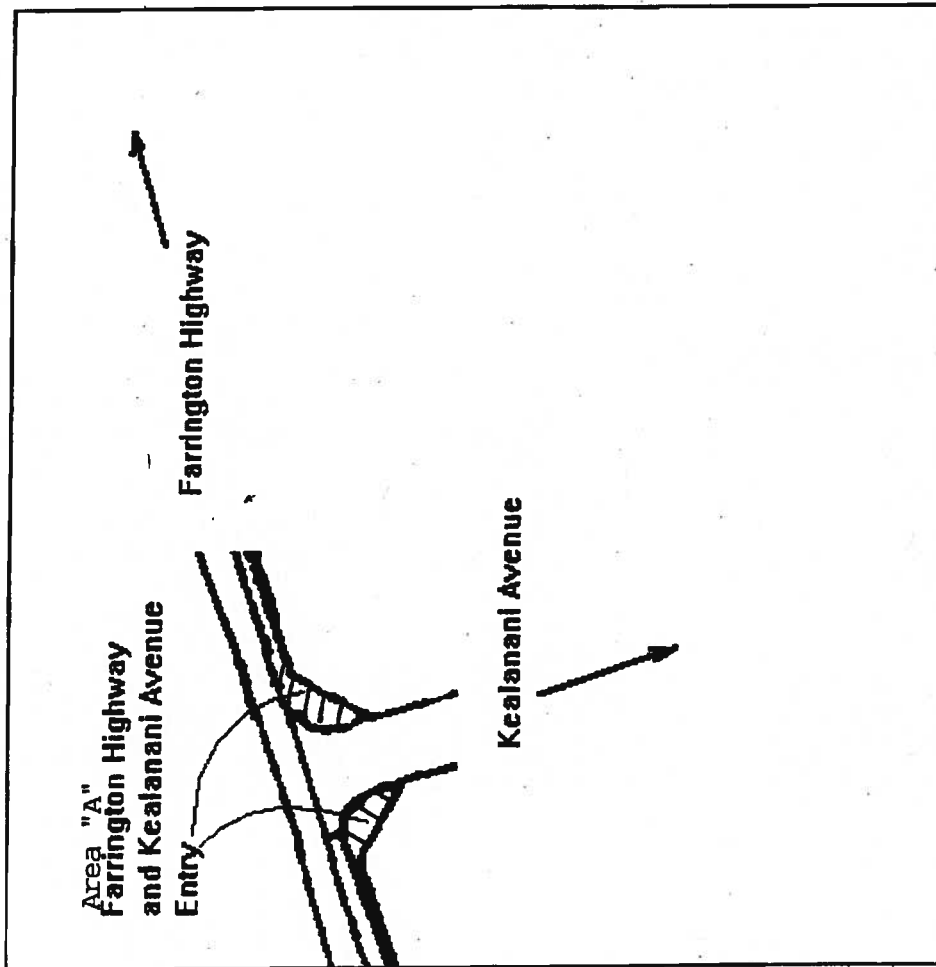
Areas "T" (Portion of Maintenance Yard):

This area consists of a portion of the fenced maintenance yard from Kapolei Parkway, Upper Drainage Channel, Kapolei Middle School and to back fence by Non-potable Reservoir. The area will be mowed, overgrowth, and trash removed. This area is not irrigated.

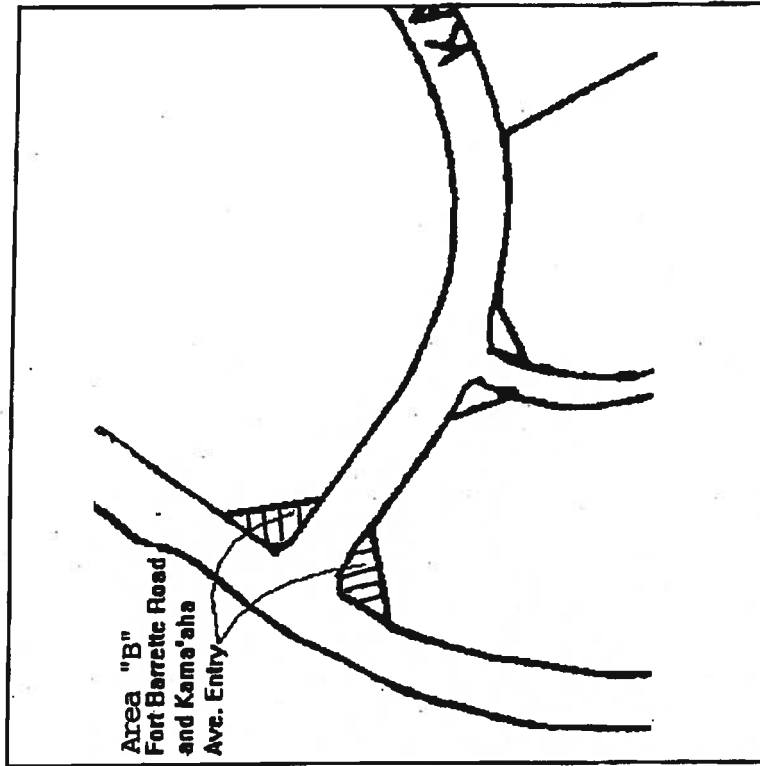
## LIST OF FIGURES

The figures below are not to scale:

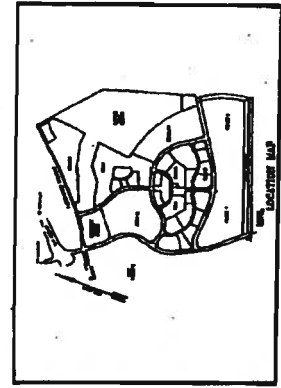
- Figure 1 - Site Map of the Villages of Kapolei.
- Figure 2 - Map of Area A (Farrington Highway and Kealanani Avenue Entry.)
- Figure 3 - Map of Area B (Fort Barrette Rd and Kama'aha Ave. Entry)
- Figure 4 - Map of Areas C and D (Kealanani Ave. and Kama'aha Ave.)
- Figure 4A- Map of Kumu Iki Street Entry "A" at Area C.
- Figure 4B- Map of Kumu Iki Street Entry "B" at Area D.
- Figure 4C- Map of Kaiu Avenue at Area D.
- Figure 5 - Map of Areas E, F and G (Northwest Corner, Vacant parcel in Village 8 and Day Care Site.)
- Figure 6 - Map of Area H along Farrington Highway
- Figure 7 - Map of Area I along Fort Barrette Road Shoulder - Kumu Iki Wall
- Figure 7A- Map of Area I-1 along Fort Barrette Road Shoulder - Village 6 and Elderly Parcel
- Figure 8 - Map of Area J (Bisecting Park)
- Figure 9- Map of Area K (Kapolei Parkway)
- Figure 9A- Area K - Kapolei Parkway roadway typical cross-section
- Figure 10 - Map of Area L (Road "A" - Kama'aha Avenue, south of Kapolei Parkway)
- Figure 11a- Map of Area R (Kuloa Avenue Median, from Kama'aha Avenue)
- Figure 11b- Map of Area R (Kuloa Avenue Median, from Kealanani Avenue)
- Figures 12A- Map of Area S (Kowelo Avenue Rights-of-Way, Kolili  
to 12D Street, Kowelo Avenue Entry and Common Area Lots at  
Oahehe Way and Kolili Place)
- Figures 13- Location of Irrigation Controllers



**FIGURE 2**  
Map of Area "A"  
(Farrington Highway and  
Kealanani Ave Entry)



**FIGURE 3**  
Map of Area "B"  
(Fort Barrette Rd.  
and Kama'aha Ave  
Entry)





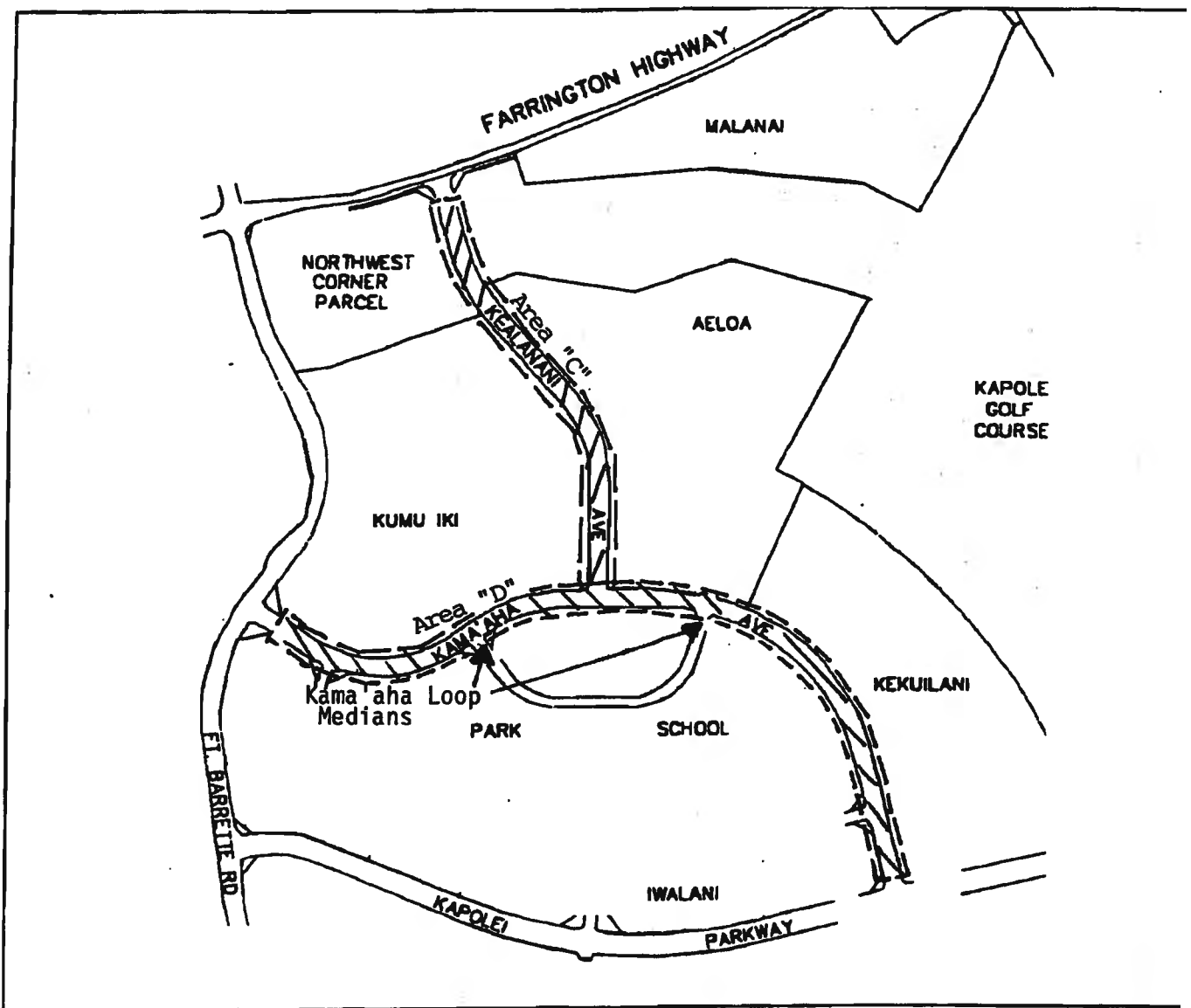
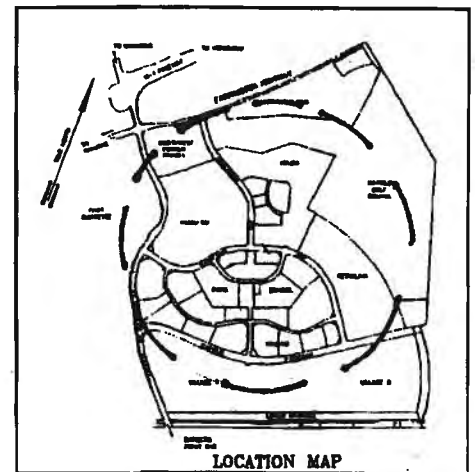
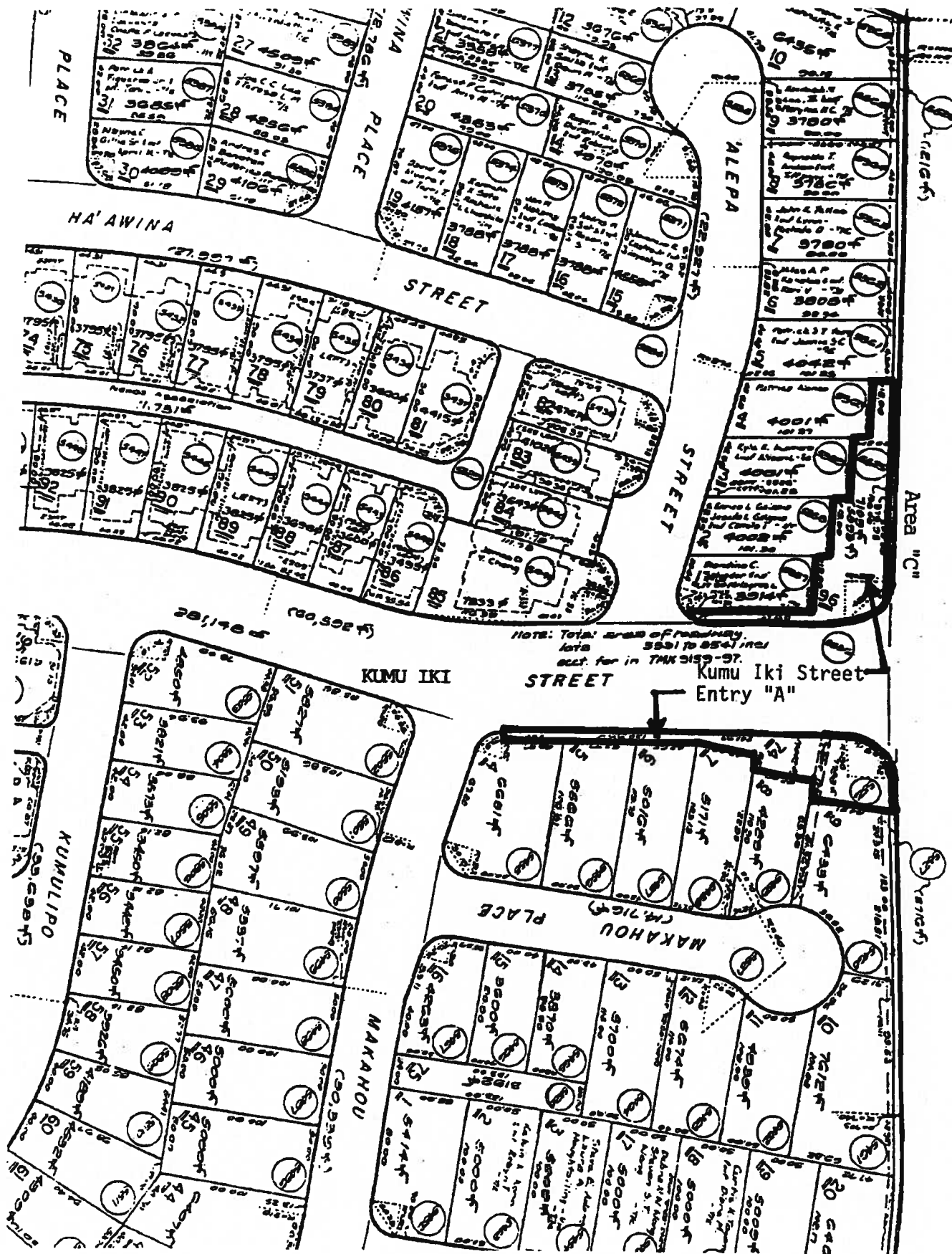


FIGURE 4

AREAS "C" AND "D"  
(Kealanani Avenue & Kama'aha Avenue)

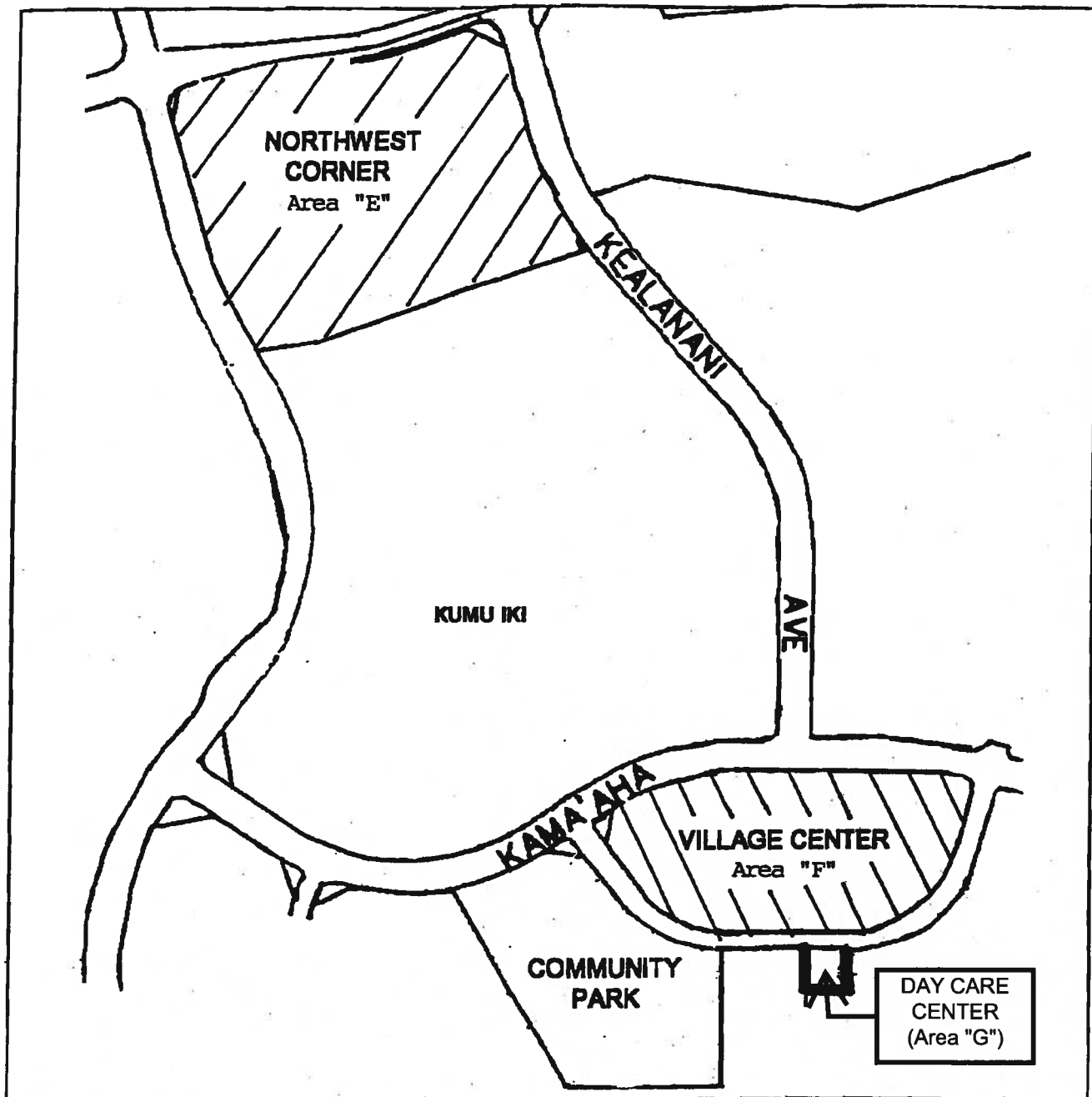




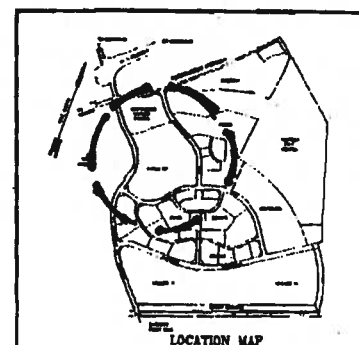
**Figure 4A**  
Map of Kumu Iki Street  
Entry "A" at Area "C"

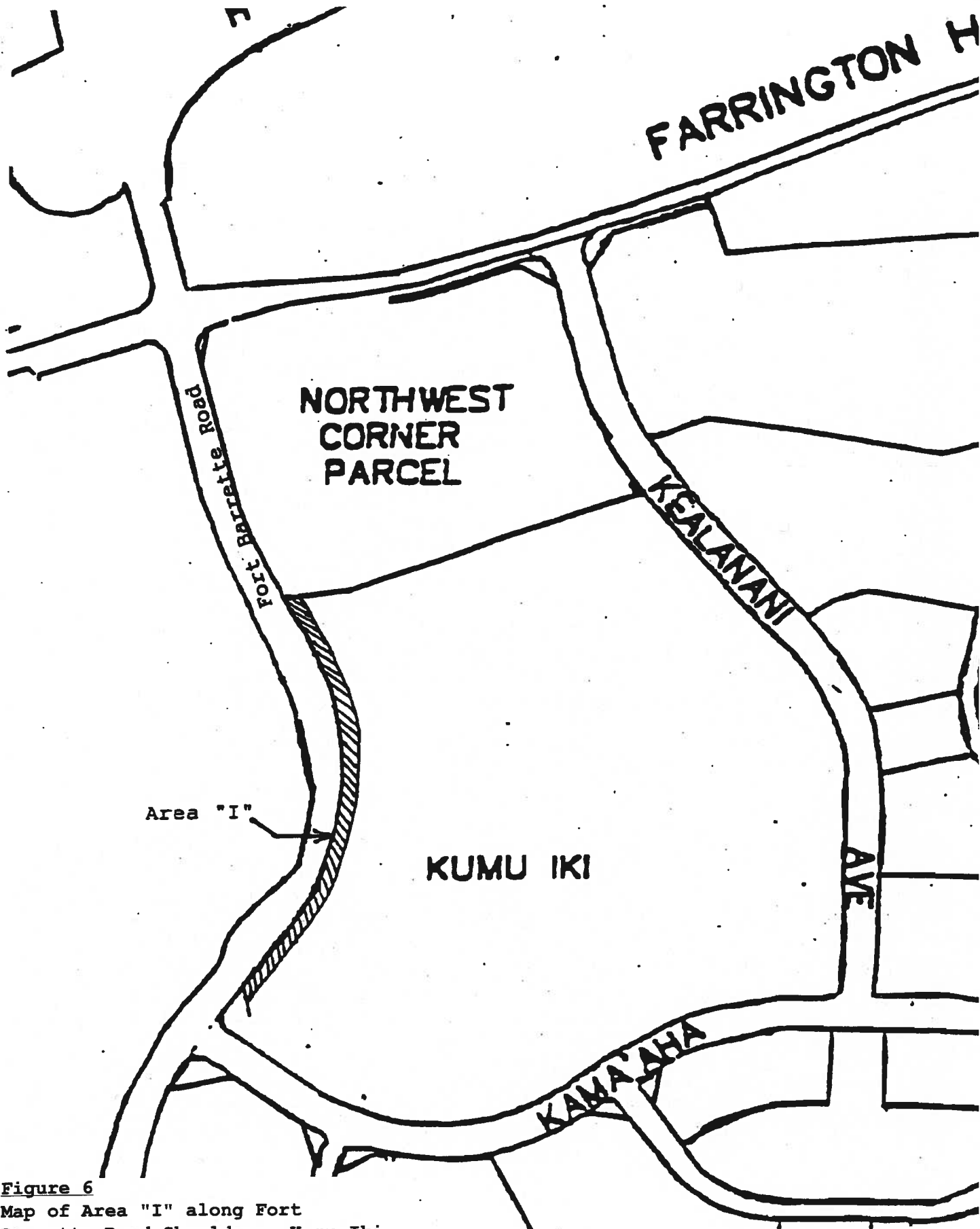






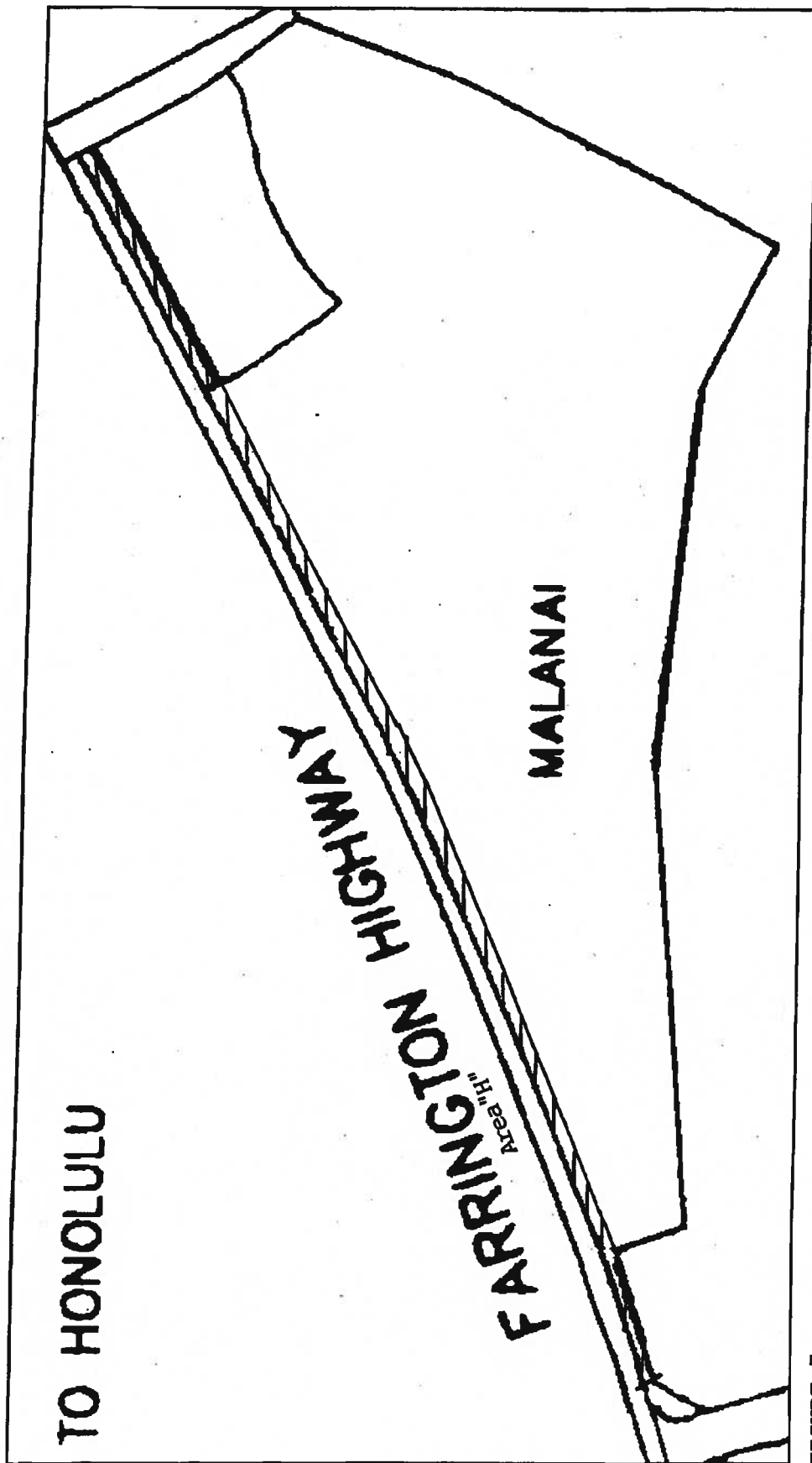
**Figure 5**  
**Map of Areas "E", "F", and "G"**  
**(Northwest Corner, Village Center**  
**and Day Care Center Sites)**



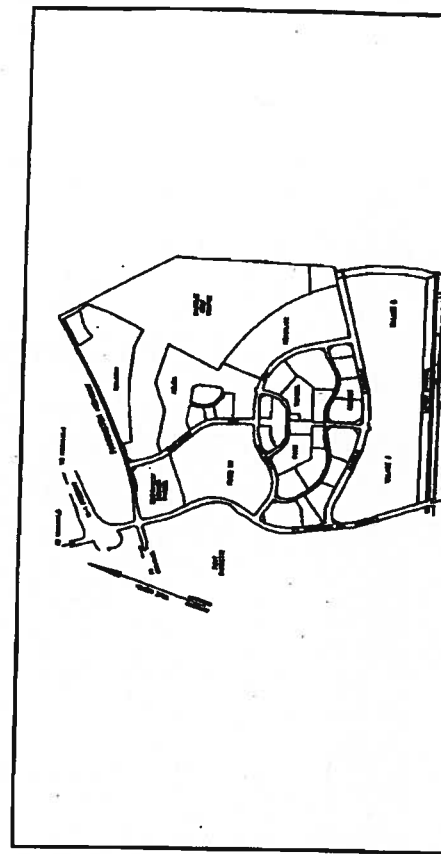


**Figure 6**  
Map of Area "I" along Fort Barrette Road Shoulder - Kumu Iki Wall)



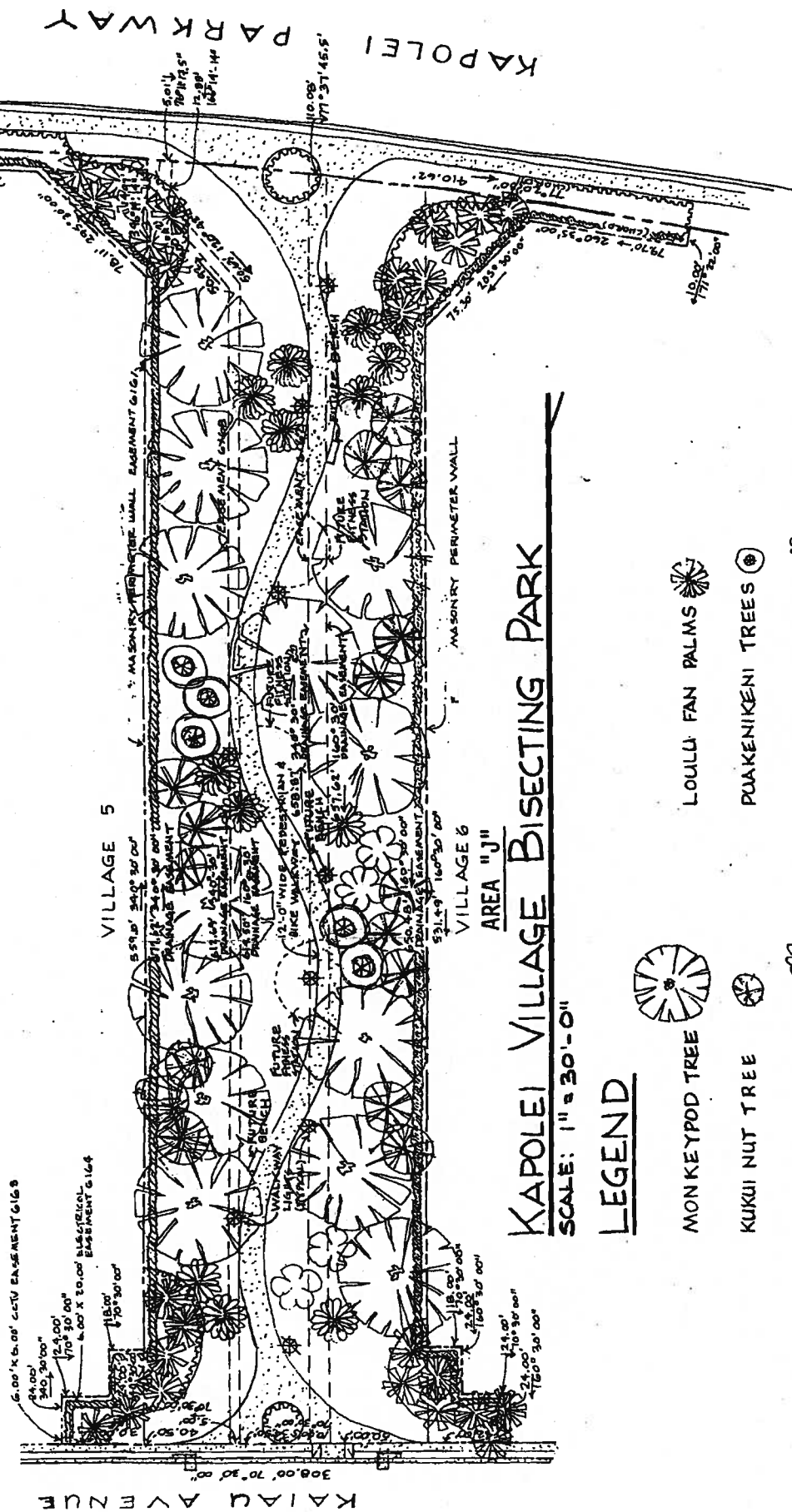


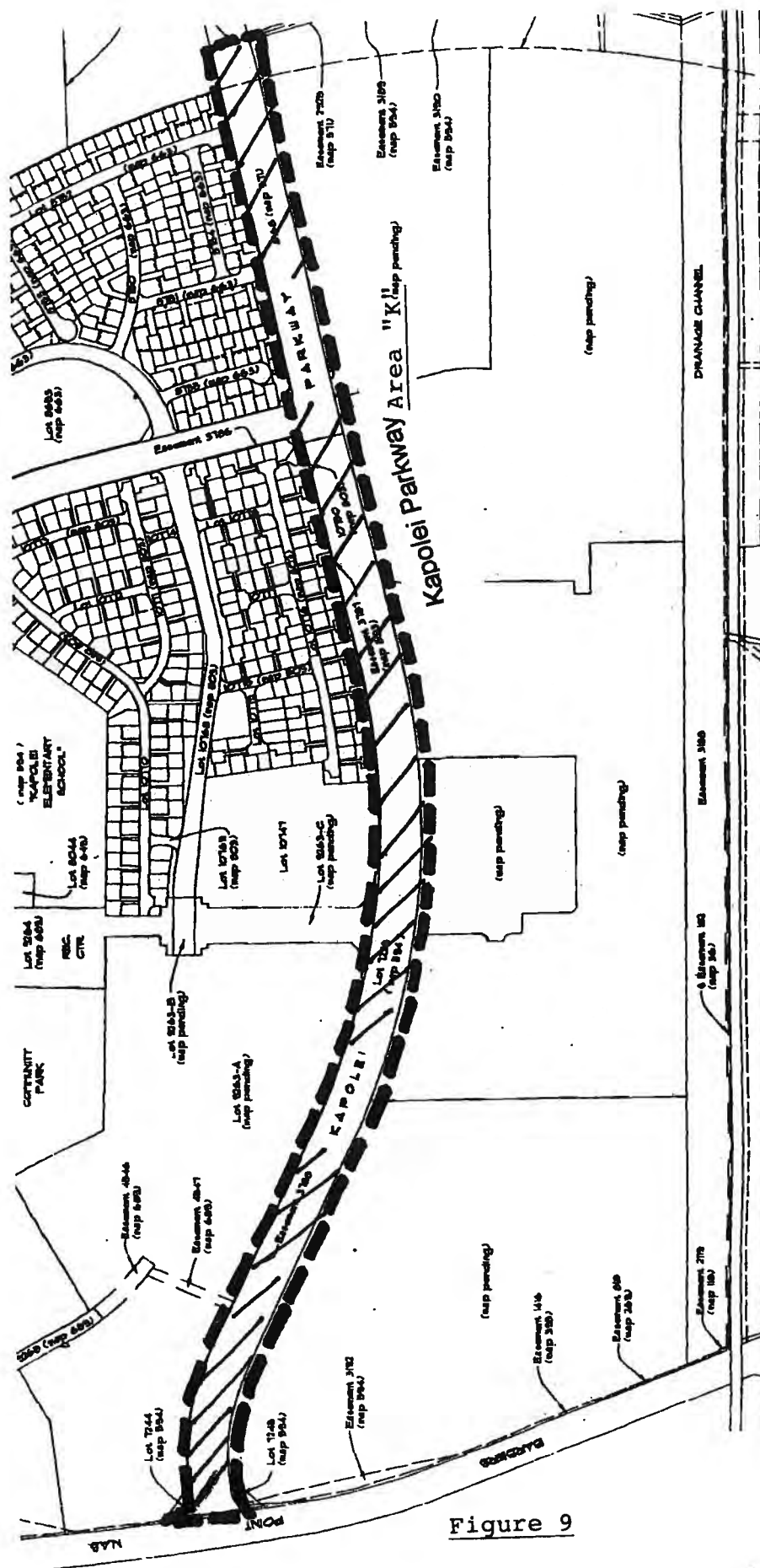
**FIGURE 7**  
**Map of Area "H"**  
**(along Farrington Highway)**





**FIGURE 8**  
**Map of Area "J"**  
**(Bisecting Park)**





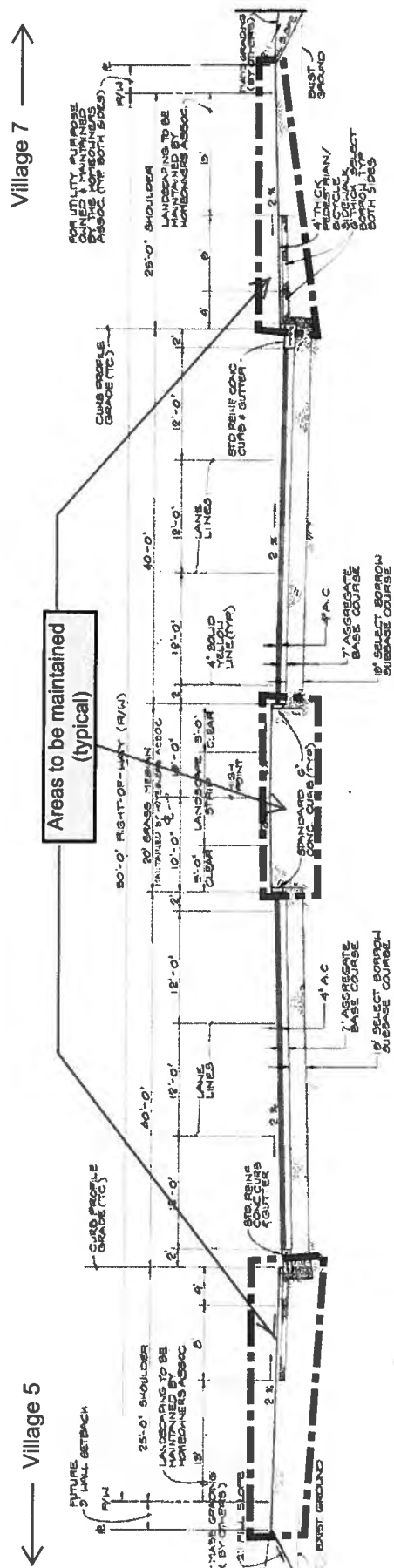
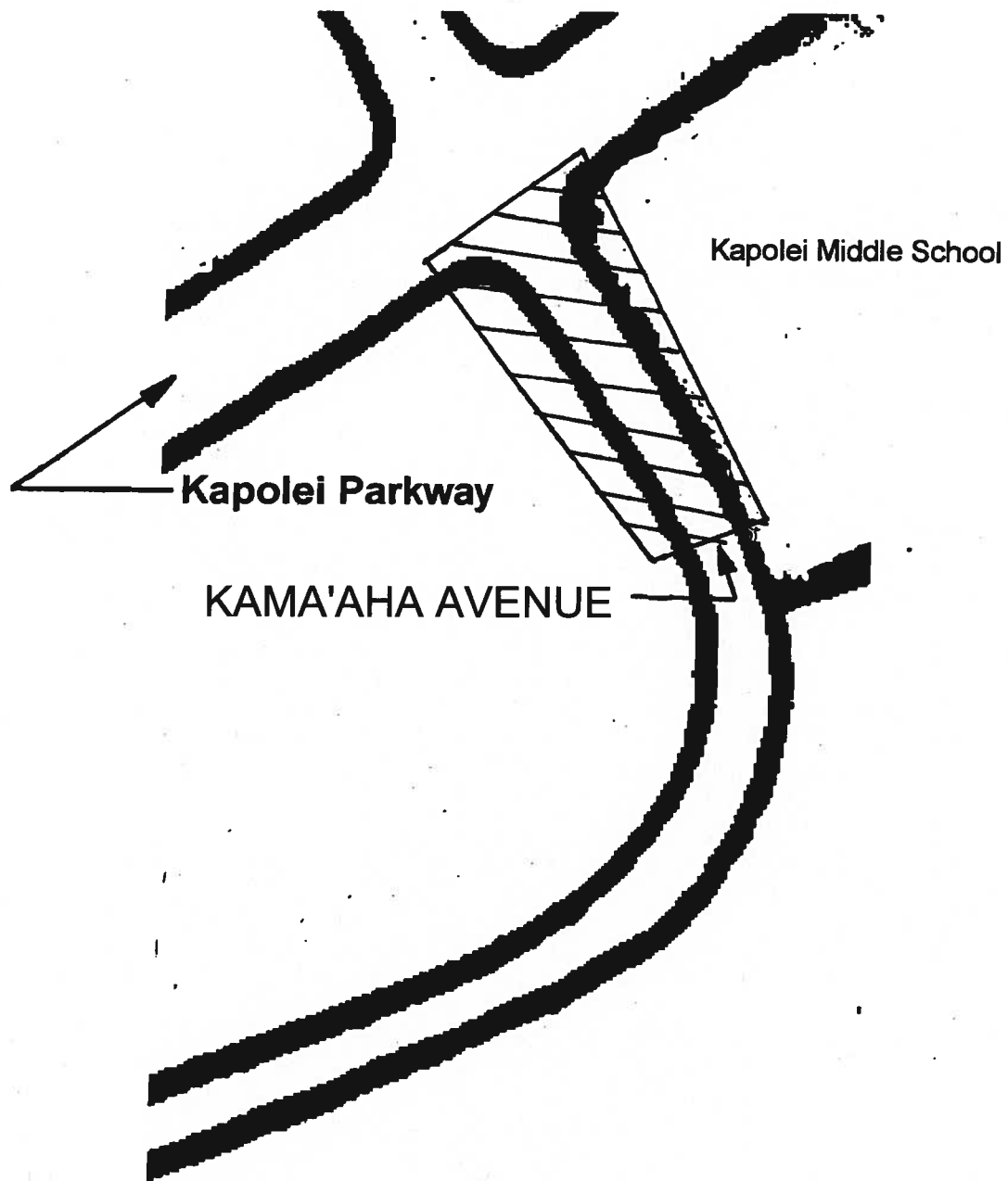
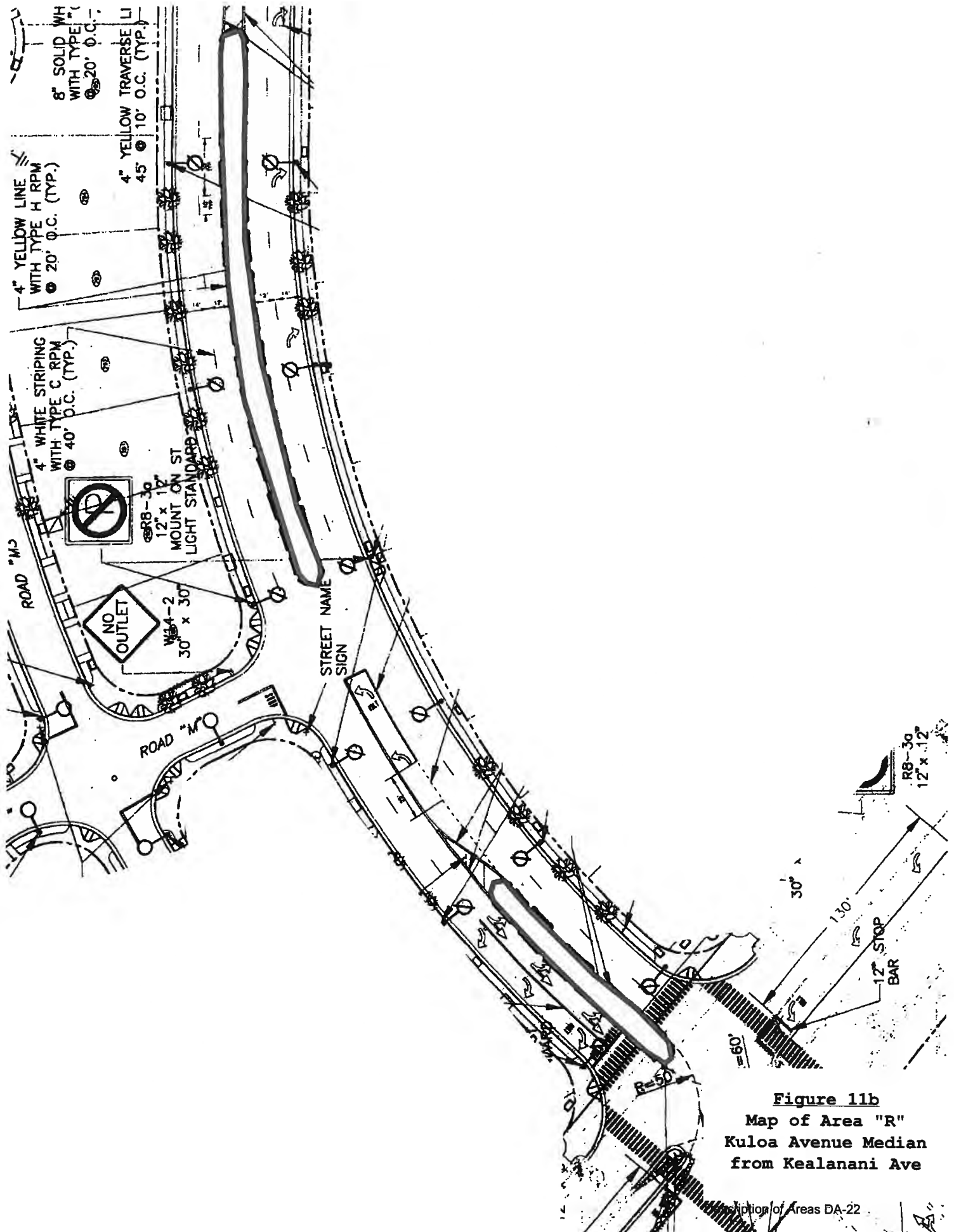


Figure 9a

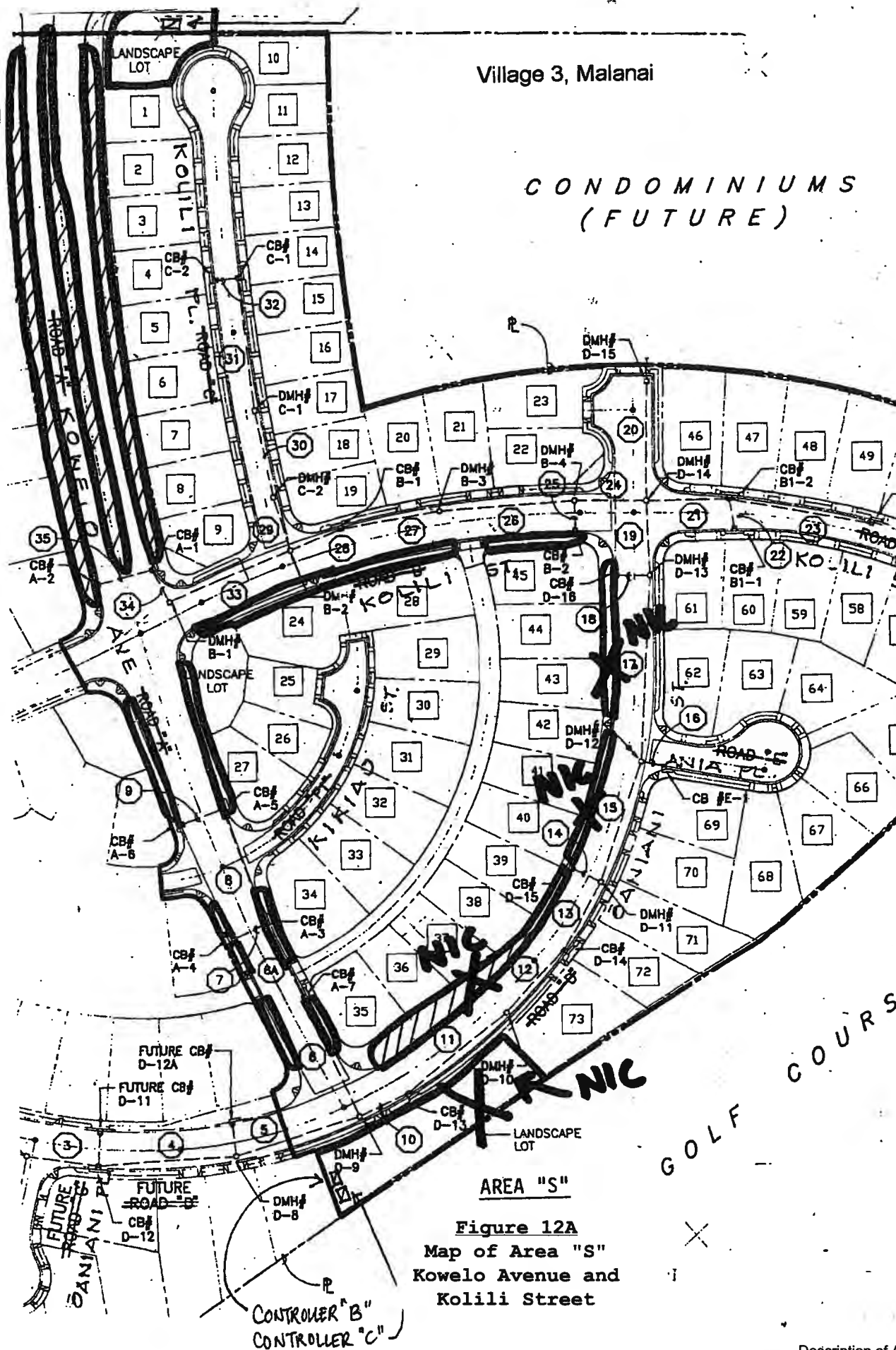


**Figure 10**  
**Map of Area "L"**  
**(Kama'aha Avenue,**  
**south of**  
**Kapolei Parkway)**





CONDOMINIUMS  
(FUTURE)





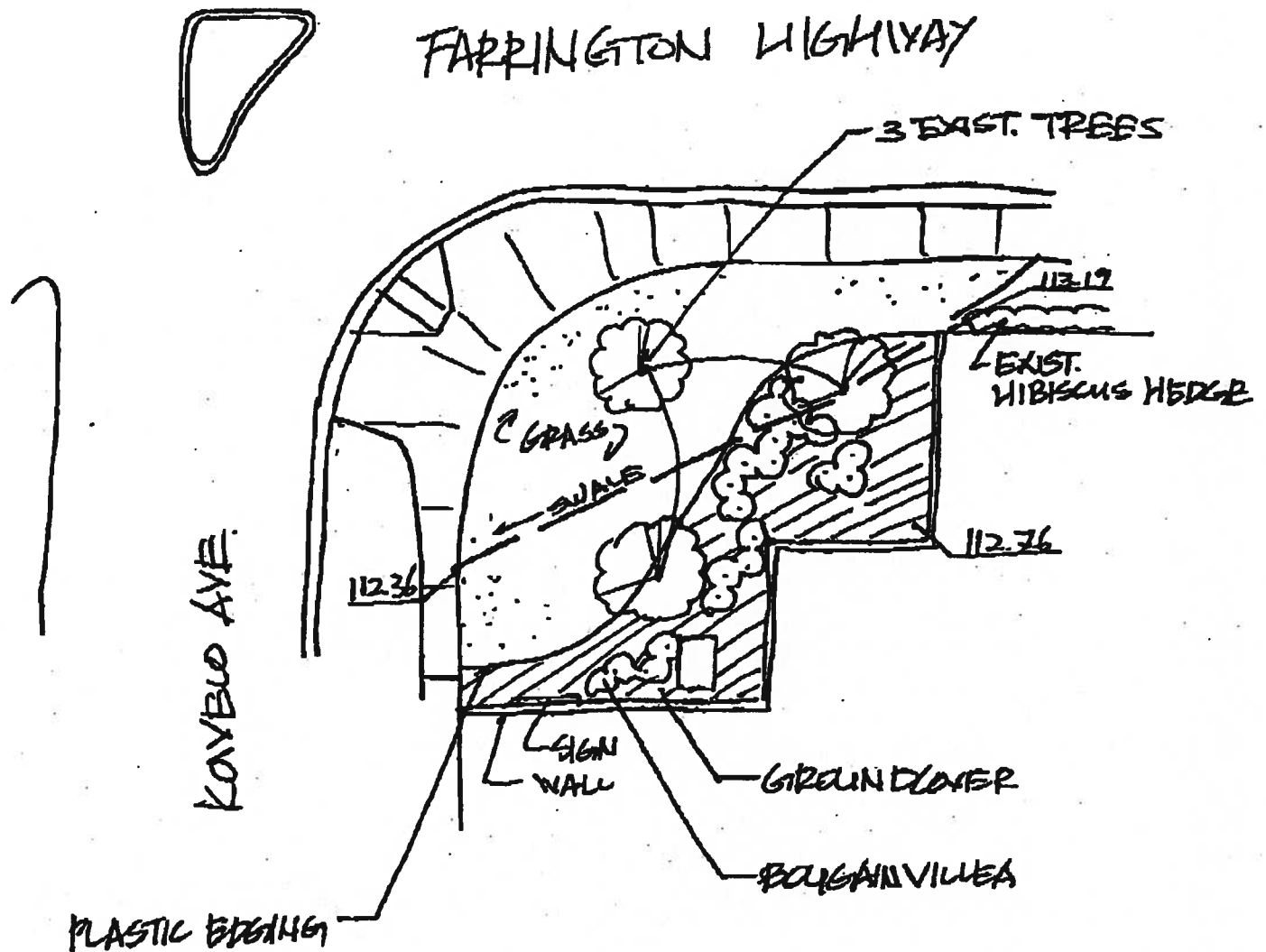
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52



Village 3, Malanai



AREA "S"

PLANTING PLAN

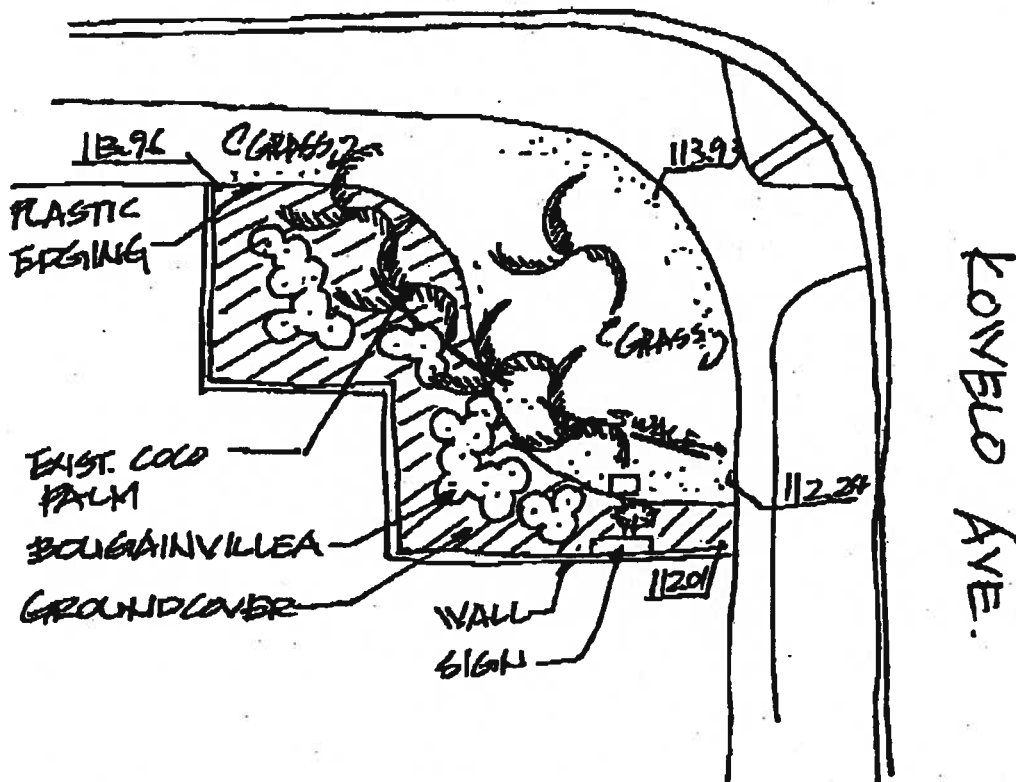
FARRINGTON HIGHWAY WIDENING

SCALE: 1" = 20'

Figure 12c

Village 3, Malanai

## FARRINGTON HIGHWAY



AREA "S"

PLANTING PLAN

FARRINGTON HIGHWAY WIDENING

Figure 12d

SCALE: 1"=20'

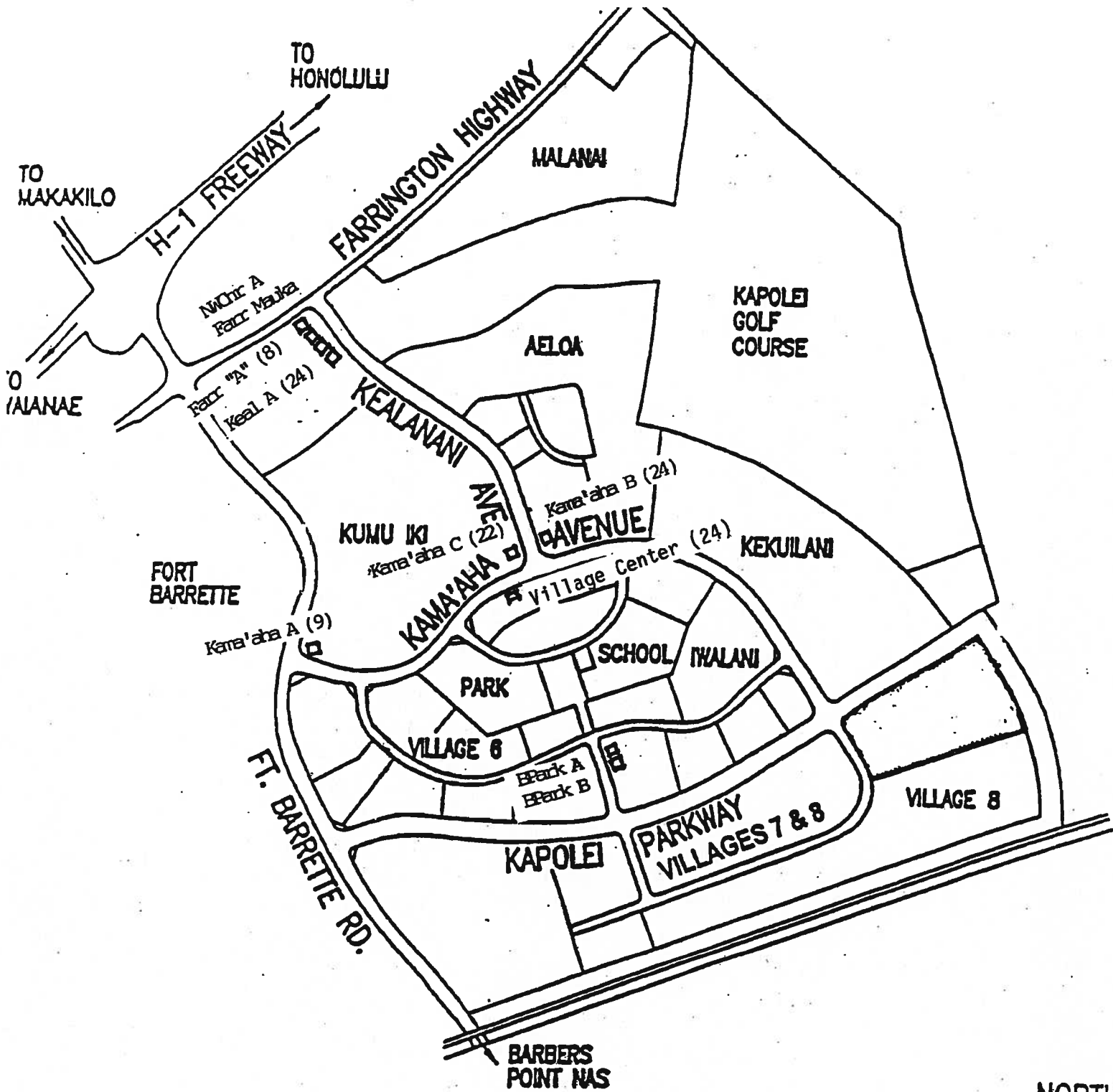


Figure 13

VILLAGES OF KAPOLEI  
LOCATION OF IRRIGATION CONTROLLERS



**VILLAGES OF KAPOLEI - LANDSCAPE MAINTENANCE FERTILIZER REQUIREMENT (TABLE 1)**

PLANT TYPE	FERTILIZER		PRUNING REQUIREMENTS	REMARKS
	GRANULAR OR HOMOGENEOUS PELLET	APPLICATION RATE		
<b>TREES</b>				
Rainbow Shower	Homogeneous pellet type 15-15 w/sop	1 lb N/1000 sq.ft. - beneath canopy - 3 times per year	Once every four (4) months	
Monkeypod	Homogeneous pellet type 15-15 w/sop	1 lb N/1000 sq.ft. - beneath canopy - 3 times per year	Once every four (4) months	
Singapore Plumeria	Homogeneous pellet type 15-15 w/sop	1 lb N/1000 sq.ft. - beneath canopy - 3 times per year	Once every four (4) months	
Hala Tree	Homogeneous pellet type 15-15 w/sop	1 lb N/1000 sq.ft. - beneath canopy - 3 times per year	Once every four (4) months	
<b>PALMS</b>				
Coconut	Palm Special fertilize - follow direction	Around canopy twice per year	Once every four (4) months	
Manila Palm	Palm Special fertilize - follow direction	Around canopy twice per year	Once every four (4) months	
Loulou Fan Palm	Palm Special fertilize - follow direction	Around canopy twice per year	Once every four (4) months	

# **VILLAGES OF KAPOLEI LANDSCAPE MAINTENANCE REQUIREMENT (TABLE 1)**

<b>PLANT TYPE</b>	<b>FERTILIZER</b>		<b>PRUNING REQUIREMENTS</b>	<b>REMARKS</b>
	<b>GRANULAR OR HOMOGENEOUS TYPE</b>	<b>APPLICATION RATE</b>		
<b>SHRUBS</b>				
Plumbago	Homogeneous pellet type 15-15	1 lb. N/1,000 s.f., 3 applications per year	Maintain at a 36" height	
Hibiscus	Homogeneous pellet type 15-15	1 lb. N/1,000 s.f., 3 applications per year	Maintain at 30" height	Yellow Hibiscus in medial planting strip.
Bougainvillea 'Miss Manila'	Homogeneous pellet type 15-15	1 lb. N/1,000 s.f., 3 applications per year	Maintain at a 24" to 30" height	
Bougainvillea 'Purple'	Homogeneous pellet type 15-15	1 lb. N/1,000 s.f., 3 applications per year	Maintain at a 24" to 30" height	
Bougainvillea 'Temple Fire'	Homogeneous pellet type 15-15	1 lb. N/1,000 s.f., 3 applications per year	Maintain at a 18" height	
'Akia	Homogeneous pellet type 15-15	1 lb. N/1,000 s.f., 3 applications per year	Maintain at a 12" to 18" height	

**VILLAGES OF KAPOLEI LANDSCAPE MAINTENANCE REQUIREMENTS (TABLE 1)**

PLANT TYPE	SIZE		FERTILIZER		APPLICATION RATE	PRUNING REQUIREMENTS	REMARKS
	HEIGHT	SPREAD	GRANULAR TYPE				
Laua`e Fern	18"	Full	15-15-15		1 lb. N/1,000 s.f., 3 applications per year	See remarks	Do not hedge Laua`e. Control height by thinning out as directed by HHFDC.
Liriope	8"	Full	15-15-15		1 lb. N/1,000 s.f., slow release, 1 application per year	No trimming required; maintain coverage within designated area	
Wedelia	6" - 12"	Full	15-15-15		1 lb. N/1,000 s.f., 3 applications per year	Maintain at 6" to 12" height	
Asystasia	6" - 12"	Full	15-15-15		1 lb. N/1,000 s.f., 3 applications per year	Maintain at 6" to 12" height	

PLANT TYPE	MOWING HEIGHT		MOWER TYPE	FERTILIZER*	LAWN DISEASE OR PEST		REMARKS
	RANGE/FREQUENCY				DISEASE & INSECTS	TREATMENT	
Seashore paspalum**	Maintain at 1/2" to 1"	Reel	15-15-15	1 lb. N/1,000 s.f., 6 times per year. (must water after application)	Insects, Army Worms, Web Worms, Rhizoctonia Pythium, Pyricularium griseae	Control insects and diseases	Verticut once per year**
St. Augustine	Maintain at 2" to 2 1/2"	Rotary	15-15-15				Apply herbicide or insecticide per manufacturer's directions, as necessary
Common Bermuda	Maintain at 3/4" to 1"	Rotary	15-15-15				

\*All fertilizer to be calibrated per manufacturers recommendations and applied by either a drop type, rotary or cyclone type fertilizer spreader.

**VILLAGES OF KAPOLEI LANDSCAPE MAINTENANCE REQUIREMENT (TABLE 1)**

PLANT TYPE	FERTILIZER	APPLICATION RATE	PRUNING REQUIREMENTS	REMARKS
<b>TREES</b>	<b>GRANULAR OR HOMOGENEOUS PELLET</b>			
Rainbow Shower	Homogeneous pellet type 15-15 w/sop	1 lb N/1000 sq.ft. - beneath canopy - 3 times per year	Once every four (4) months	
Monkeypod	Homogeneous pellet type 15-15 w/sop	1 lb N/1000 sq.ft. - beneath canopy - 3 times per year	Once every four (4) months	
Singapore Plumeria	Homogeneous pellet type 15-15 w/sop	1 lb N/1000 sq.ft. - beneath canopy - 3 times per year	Once every four (4) months	
Hala Tree	Homogeneous pellet type 15-15 w/sop	1 lb N/1000 sq.ft. - beneath canopy - 3 times per year	Once every four (4) months	
<b>PALMS</b>				
Coconut	Palm Special fertilize - follow direction	Around canopy twice per year	Once every four (4) months	
Manila Palm	Palm Special fertilize - follow direction	Around canopy twice per year	Once every four (4) months	
Loulou Fan Palm	Palm Special fertilize - follow direction	Around canopy twice per year	Once every four (4) months	

**VILLAGES OF KAPOLEI LANDSCAPE MAINTENANCE REQUIREMENT (TABLE 1)**

PLANT TYPE	FERTILIZER		PRUNING REQUIREMENTS	REMARKS
	GRANULAR OR HOMOGENEOUS TYPE	APPLICATION RATE		
SHRUBS				
Plumbago	Homogeneous pellet type 15-15	1 lb. N/1,000 s.f., 3 applications per year	Maintain at a 36" height	
Hibiscus	Homogeneous pellet type 15-15	1 lb. N/1,000 s.f., 3 applications per year	Maintain at 30" height	Yellow Hibiscus in medial planting strip.
Bougainvillea 'Miss Manila'	Homogeneous pellet type 15-15	1 lb. N/1,000 s.f., 3 applications per year	Maintain at a 24" to 30" height	
Bougainvillea 'Purple'	Homogeneous pellet type 15-15	1 lb. N/1,000 s.f., 3 applications per year	Maintain at a 24" to 30" height	
Bougainvillea 'Temple Fire'	Homogeneous pellet type 15-15	1 lb. N/1,000 s.f., 3 applications per year	Maintain at a 18" height	
'Akia	Homogeneous pellet type 15-15	1 lb. N/1,000 s.f., 3 applications per year	Maintain at a 12" to 18" height	



**VILLAGES OF KAPOLEI LANDSCAPE MAINTENANCE REQUIREMENTS (TABLE 1)**

PLANT TYPE	SIZE		FERTILIZER		APPLICATION RATE	PRUNING REQUIREMENTS	REMARKS
	HEIGHT	SPREAD	GRANULAR TYPE				
Laua`e Fern	18"	Full	15-15-15		1 lb. N/1,000 s.f., 3 applications per year	See remarks	Do not hedge Laua`e. Control height by thinning out as directed by HHFDC.
Liriope	8"	Full	15-15-15		1 lb. N/1,000 s.f., slow release, 1 application per year	No trimming required; maintain coverage within designated area	
Wedelia	6"- 12"	Full	15-15-15		1 lb. N/1,000 s.f., 3 applications per year	Maintain at 6" to 12" height	
Asystasia	6"- 12"	Full	15-15-15		1 lb. N/1,000 s.f., 3 applications per year	Maintain at 6" to 12" height	

PLANT TYPE	MOWING HEIGHT		MOWER TYPE	FERTILIZER*		LAWN DISEASE OR PEST		REMARKS
	RANGE/FREQUENCY			HOMOGENEOUS PELLET TYPE	APPL. RATE	DISEASE & INSECTS	TREATMENT	
Seashore paspalum**	Maintain at 1/2" to 1"	Reel		15-15-15	1 lb. N/1,000 s.f., 6 times per year. (must water after application)	Insects, Army Worms, Web Worms, Rhizoctonia Pythium, Pyricularium griseae	Control insects and diseases	Verticut once per year**
St. Augustine	Maintain at 2" to 2 1/2"	Rotary		15-15-15				Apply herbicide or insecticide per manufacturer's directions, as necessary
Common Bermuda	Maintain at 3/4" to 1"	Rotary		15-15-15				

\*All fertilizer to be calibrated per manufacturers recommendations and applied by either a drop type, rotary or cyclone type fertilizer spreader.

# MONTHLY INSPECTION REPORT

# SAMPLE

Villages of Kapolei Landscape Maintenance  
Inspection Checklist  
For the Week of \_\_\_\_\_, 2015

Submitted by: \_\_\_\_\_  
Date: \_\_\_\_\_

#	Item Description	Good	NEED ATTENTION			
1	Areas "A" & "B" (Entries)					
	a) Grass & Groundcover		Condition:			
	b) Irrigation Repair					
	i) Control Electrical Valves		#	to be serviced/repaired/replaced		
	ii) Sprinkler Heads		#	to be serviced/repaired/replaced		
	iii) Irrig Main/Sprinkler Lines		Location:			
2	Areas "C" & "D" (Roadways)					
	a) Grass & Groundcover		Condition:			
	b) Irrigation Repair					
	i) Control Electrical Valves		#	to be serviced/repaired/replaced		
	ii) Sprinkler Heads		#	to be serviced/repaired/replaced		
	iii) Irrig Main/Sprinkler Lines		Location:			
3	Areas "E" (Northwest Corner)					
	a) Grass (Lawn)		Condition:			
	b) Tree Trimming (Farr. Highway)					
	c) Irrigation Repair/Replacement		#heads	& # valves	to be serviced	
	d) Drainage Ditch		Condition:			
4	Areas "F" (Village Center) & Area "G" (Day Care Lot)					
	a) Mowing/Trimming		Condition:			
	b) Irrigation Repair (Area "F" Only)		#heads	& # valves	to be serviced	
5	Area "H" (Farr Hwy Makai)					
	a) Shrubs & Groundcover		Condition:			
	b) Irrigation Sprinkler lines		Location:			
	c) Irrigation Heads and Valves		#heads	& # valves	to be serviced	
6	Area "I" (Fort Barrette Shoulder)					
	a) Maintain Shoulder along Wall		Condition:			
	b) Herbicide (If Necessary)					
7	Areas "J" (Bisecting Park)					
	a) Grass (Lawn, Seashore Pasp.)		Condition:			
	b) Shrubs & Groundcover		Condition:			
	c) Irrigation Sprinkler lines		Location:			
	d) Irrigation Heads and Valves		#heads	& # valves	to be serviced	
8	Area "K" (Kapolei Parkway)					
	a) Maintain Shoulders and Median		Condition:			
	b) Herbicide (If Necessary)					
9	Area "L" (Road "A" - Kama'aha)					
	a) Grass (Median)		Condition:			
	b) Irrigation Sprinkler lines		Location:			
	c) Irrigation Heads and Valves		#heads	& # valves	to be serviced	
10	Other Areas		Condition:			
	a) Landscaped areas & shoulders (Areas "R" and "S")					
	b) Vacant Parcels (Areas "T" and "U")					

Note: General Clean-up to be performed on a daily basis.

## MONTHLY INSPECTION REPORT

# SAMPLE

Villages of Kapolei  
Irrigation System  
Service/Repair/Replacement

	Controller Location	Quantity Electric Valve	Quantity Sprinkler Head	Linear Feet Sprinkler Line	Linear Feet Trans Main	Service Status
1	Farrington Hwy A (Entry Features)					
2	Farrington Hwy B (Kealanani Ave)					
3	Kealanani C (Northwest Corner)					
4	Kama'aha B (East of Kealanani)					
5	Kama'aha C (West of Kealanani)					
6	Kama'aha A (Entry Feature)					
7	Bisecting Park A					
8	Bisecting Park B					
9	Village Center					

Note: Locations 1 & 6 are for Areas "A" & "B"; Locations 2, 4 & 5 are for Areas "C" & "D"

Comments:

# **PART IV**

## **APPENDIX**

## Years 2015 and 2016

### Holidays to be observed by the HAWAII STATE GOVERNMENT

[www.dhrd.hawaii.gov](http://www.dhrd.hawaii.gov)

Website where State Holiday Schedule posted

### Year 2015 HAWAII STATE HOLIDAYS

<u>(Hawaii Rev. Statutes, Sec. 8-1)</u>	<u>Day Observed in 2015</u>	<u>Official Date Designated in Statute/Constitution</u>
New Year's Day.....	Jan. 1 Thursday.....	The first day in January
Dr. Martin Luther King, Jr. Day.....	Jan. 19 Monday.....	The third Monday in January
Presidents' Day.....	Feb. 16 Monday.....	The third Monday in February
Prince Jonah Kuhio Kalaniana'ole Day.....	Mar. 26 Thursday.....	The twenty-sixth day in March
Good Friday.....	April 3 Friday.....	The Friday preceding Easter Sunday
Memorial Day.....	May 25 Monday.....	The last Monday in May
King Kamehameha I Day.....	June 11 Thursday.....	The eleventh day in June
Independence Day.....	July 3 Friday.....	The fourth day in July
Statehood Day.....	Aug. 21 Friday.....	The third Friday in August
Labor Day.....	Sept. 7 Monday.....	The first Monday in September
Veterans' Day.....	Nov. 11 Wednesday.....	The eleventh day in November
Thanksgiving.....	Nov. 26 Thursday.....	The fourth Thursday in November
Christmas.....	Dec. 25 Friday.....	The twenty-fifth day in December

### Year 2016 HAWAII STATE HOLIDAYS

<u>(Hawaii Rev. Statutes, Sec. 8-1)</u>	<u>Day Observed in 2016</u>	<u>Official Date Designated in Statute/Constitution</u>
New Year's Day.....	Jan. 1 Friday.....	The first day in January
Dr. Martin Luther King, Jr. Day.....	Jan. 18 Monday.....	The third Monday in January
Presidents' Day.....	Feb. 15 Monday.....	The third Monday in February
Prince Jonah Kuhio Kalaniana'ole Day.....	Mar. 25 Friday.....	The twenty-sixth day in March
Good Friday.....	Mar. 25 Friday.....	The Friday preceding Easter Sunday
Memorial Day.....	May 30 Monday.....	The last Monday in May
King Kamehameha I Day.....	June 10 Friday.....	The eleventh day in June
Independence Day.....	July 4 Monday.....	The fourth day in July
Statehood Day.....	Aug. 19 Friday.....	The third Friday in August
Labor Day.....	Sept. 5 Monday.....	The first Monday in September
General Election Day.....	Nov. 8 Tuesday.....	The first Tuesday in Nov. following the first Monday of even-numbered years. (Hawaii State Constitution, Article 2 – Section 8)
Veterans' Day.....	Nov. 11 Friday.....	The eleventh day in November
Thanksgiving.....	Nov. 24 Thursday.....	The fourth Thursday in November
Christmas.....	Dec. 26 Monday.....	The twenty-fifth day in December

**FOOTNOTES:** For use solely by State government agencies. Federal government and local banking holidays may differ. For State agencies that operate on other than Monday-Friday 7:45 AM to 4:30 PM schedules, also refer to appropriate collective bargaining agreements. Created by the Department of Human Resources Development 10/1/2014; subject to change.

**CERTIFICATION OF COMPLIANCE  
FOR  
EMPLOYMENT OF STATE RESIDENTS  
HRS CHAPTER 103B, AS AMENDED BY ACT 192, SLH 2011**

Project Title: \_\_\_\_\_

Agency Project No: \_\_\_\_\_

Contract No.: \_\_\_\_\_

As required by Hawai'i Revised Statutes Chapter 103B, as amended by Act 192, Session Laws of Hawaii 2011--Employment of State Residents on Construction Procurement Contracts, I hereby certify under oath, that I am an officer of \_\_\_\_\_ and

(Name of Contractor or Subcontractor Company)

for the Project Contract indicated above, \_\_\_\_\_ was in

(Name of Contractor or Subcontractor Company)

compliance with HRS Chapter 103B, as amended by Act 192, SLH 2011, by employing a workforce of which not less than eighty percent are Hawai'i residents, as calculated according to the formula in the solicitation, to perform this Contract.

☐ I am an officer of the Contractor for this contract.

☐ I am an officer of a Subcontractor for this contract.

**CORPORATE SEAL**

\_\_\_\_\_  
(Name of Company)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

Subscribed and sworn to me before this  
\_\_\_\_ day of \_\_\_\_\_, 2011.

Doc. Date: \_\_\_\_\_ # of Pages \_\_\_\_\_ 1<sup>st</sup> Circuit

Notary Name: \_\_\_\_\_

Doc. Description: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, 1<sup>st</sup> Circuit, State of Hawai'i

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Date

**NOTARY CERTIFICATION**

# ESTIMATE FOR CHANGE ORDER

(General and Subcontractor)

DATE \_\_\_\_\_

PROJECT: \_\_\_\_\_

HHFDC JOB NO. \_\_\_\_\_ CONTRACTOR \_\_\_\_\_

Ref: Bulletin No. \_\_\_\_\_ PCD No. \_\_\_\_\_ Field Order \_\_\_\_\_

Work Description \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## MATERIALS

Unit	Description	Unit Prices	Subtotal
		\$	\$ 0.00
		\$	\$ 0.00
		\$	\$ 0.00
		\$	\$ 0.00
ea		\$	\$ 0.00
ea		\$	\$ 0.00

TOTAL FOR MATERIALS..... \$ 0.00 (1)

## LABOR

Classification	Hours	Hourly Rate	Fringe	
		\$		\$ 0.00
Fringe	0	\$	\$ 0.00	\$ 0.00
		\$		\$ 0.00
Fringe	0	\$	\$ 0.00	\$ 0.00
		\$		\$ 0.00
Fringe	0	\$	\$ 0.00	\$ 0.00
		\$		\$ 0.00
Fringe	0	\$	\$ 0.00	\$ 0.00
		\$		\$ 0.00
Fringe	0	\$	\$ 0.00	\$ 0.00

SUBTOTAL FOR LABOR ..... \$ 0.00 (2) \$ 0.00 (3)

TOTAL FOR LABOR (Fringes & Wages) (2) + (3) ..... \$ 0.00 (4)

SUBTOTAL (MATERIALS & LABOR) (1) + (4) ..... \$ 0.00 (5)

Overhead & Profit (15%) of (5)..... \$ 0.00 (6)

Insurance & Taxes ( % of (3) (see Note A)..... \$ 0.00 (7)

TOTAL (MATERIALS & LABOR) (5)+(6)+(7) ..... \$ 0.00 (8)

## ESTIMATE FOR CHANGE ORDER

(General and Subcontractor)

### EQUIPMENT

Type or Class	Hours	Hourly Rate	
		\$	\$ 0.00
		\$	\$ 0.00
		\$	\$ 0.00
		\$	\$ 0.00
		\$	\$ 0.00
		\$	\$ 0.00
		\$	\$ 0.00
TOTAL FOR EQUIPMENT .....			\$ 0.00 (9)

### SUBCONTRACTORS

Name		
		\$
		\$
		\$
		\$
		\$
		\$
		\$
SUBTOTAL FOR SUBCONTRACTORS .....		\$ 0.00 (10)
Overhead & Profit 7% of (10) .....		\$ 0.00 (11)
TOTAL FOR SUBCONTRACTORS (10)+(11).....		\$ 0.00 (12)
TOTAL (MATERIAL, LABOR, EQUIPMENT & SUBCONTRACTORS) (8)+(9)+(12) .....		\$ 0.00 (13)
Bond Fee	(            %) of (13) if applicable (see Note B).....	\$ 0.00 (14)
General Excise Tax 4.713% on (13) .....		\$ 0.00 (15)
TOTAL FOR CHANGE ORDER (13)+(14)+(15) .....		\$ 0.00 (16)

Notes: A Contractor to enter insurance & tax rate and submit proof of such  
B Contractor to enter bond rate and submit proof of such



**HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**677 QUEEN STREET, SUITE 300  
HONOLULU, HAWAII 96813**CHANGE ORDER**

NAME OF CONTRACTOR:

ADDRESS OF CONTRACTOR:

DATE ISSUED:

CHANGE ORDER NO:

HHFDC CONTRACT NO:

HHFDC JOB NO:

FIELD ORDERS COVERED BY THIS CHANGE ORDER:

**DESCRIPTION OF WORK:**

BY VIRTUE OF THIS CHANGE ORDER, THE FOLLOWING ADJUSTMENTS TO THE CONTRACT ARE ESTABLISHED:

**CONTRACT PRICE**☐  
☐  
☐

NOT CHANGED

INCREASED BY

\$0.00

DECREASED BY

\$0.00

ORIGINAL CONTRACT AMOUNT

\$0.00

PREVIOUS CHANGE ORDERS

\$0.00

REVISED CONTRACT AMOUNT

\$0.00

**CONTRACT TIME**☐  
☐  
☐

NOT CHANGED

INCREASED BY

CALENDAR / WORKING DAYS

DECREASED

CALENDAR / WORKING DAYS

ORIGINAL COMPLETION DATE:

REVISED COMPLETION DATE:

**ISSUED**

HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

BY

EXECUTIVE DIRECTOR

DATE

**ACCEPTANCE**

CONTRACTOR:

CONTRACTOR AUTHORIZED REPRESENTATIVE

TITLE

DATE

UPON ISSUANCE BY THE HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION AND ACCEPTANCE BY THE CONTRACTOR, THIS DOCUMENT SHALL BECOME A SUPPLEMENTAL AGREEMENT AND ALL CLAIMS AGAINST THE DEPARTMENT WHICH ARE INCIDENTAL TO, A CONSEQUENCE OF, OR ARISE OUT THIS CHANGE, ARE SATISFIED.

# HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

677 QUEEN STREET, SUITE 300  
HONOLULU, HAWAII 96813

## FIELD ORDER

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
ATTN: \_\_\_\_\_

DATE: \_\_\_\_\_  
FIELD ORDER NO.: \_\_\_\_\_  
PROJECT: \_\_\_\_\_  
HHFDC JOB NO.: \_\_\_\_\_  
HHFDC CONTRACT NO.: \_\_\_\_\_

Work shall be performed in accordance with this FIELD ORDER and applicable provisions of the Contract Documents.  
To expedite the Work and avoid delays, proceed with this work promptly.

### DESCRIPTION OF WORK TO BE PERFORMED OR DELETED:

### ATTACHMENTS:

### CONDITIONS AND TERMS:

- ☐ Work is considered a MINOR CHANGE and shall be performed at no additional cost or time to the HHFDC.  
☐ Provide a cost proposal for the work. Submit the proposal in accordance with the General Conditions.  
☐ Perform the Work under the Force Account Provisions of the General Conditions.  
☐ Work is subject to an adjustment to contract price and / or contract time as follows:  

<input type="checkbox"/> Fixed	<input type="checkbox"/> Estimate	<input type="checkbox"/> Maximum*	Change in Contract Sum. Add \$	_____
<input type="checkbox"/> Fixed	<input type="checkbox"/> Estimate	<input type="checkbox"/> Maximum*	Change in Contract Time. Add	_____ Working / Calendar Days

\*Not to exceed cost and/or time that may be reduced after review and cost analysis of change proposals by the Hawaii Housing Finance and Development Corporation (HHFDC).

### ISSUED BY:

### RECEIVED:

\_\_\_\_\_  
Executive Director Date  
Hawaii Housing Finance and Development  
Corporation

\_\_\_\_\_  
Contractor's Date  
Authorized Representative

Copy: File Budget Inspector Contractor Consultant

CONTRACTOR'S CERTIFICATION OF PAYMENT

I hereby certify, to the best of my knowledge and belief, that:

- (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
- (2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements;
- (3) Any money paid to the prime contractor from previous payments have been dispersed to subcontractors and suppliers within ten (10) days after receipt of the money, in accordance with the terms of the subcontract agreements;
- (4) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

[103-10.5: H.R.S. / §3-125-23 HAR - Prompt Payment of the General Conditions, 8.5]

**\*\* NOTE: This form shall be submitted with each and every payment request.**

Company Name\_\_\_\_\_

Print Name and Title\_\_\_\_\_

Signature\_\_\_\_\_

Date\_\_\_\_\_ Payment Request No.\_\_\_\_\_

HHFDC Job #\_\_\_\_\_ Contract #\_\_\_\_\_

Job Title:\_\_\_\_\_

**Reference:** \_\_\_\_\_  
(Contract Number)

\_\_\_\_\_ (IFB/RFP Number)

\_\_\_\_\_ affirms it is in  
(Company Name)

compliance with all laws, as applicable, governing doing business in the State of Hawaii to include the following:

- maintains a "Certificate of Good Standing" from the Department of Commerce and Consumer Affairs, Business Registration Division.

Date: \_\_\_\_\_

## CONTRACTOR'S WAIVER AND RELEASE OF LIEN

The undersigned, \_\_\_\_\_ ("CONTRACTOR"),  
has furnished to Hawaii Housing Finance and Development Corporation  
("HHFDC"), labor and materials for incorporation or use in improvements on the  
following job:

Project Name: \_\_\_\_\_

Project Location: \_\_\_\_\_, Oahu, Hawaii

HHFDC Job No.: \_\_\_\_\_

situated on real property, being Tax Key: \_\_\_\_\_,

located at \_\_\_\_\_, Oahu, Hawaii.

In order to induce the HHFDC to pay the sum of \$ \_\_\_\_\_,  
to CONTRACTOR, the undersigned hereby releases the HHFDC, the State, and  
the owner of the above described real property, from any claims, and do hereby  
expressly waive and release any and all lien rights which the undersigned have  
or may have, against the improvements and/or the real property described above  
under Section 507-41, et seq., Hawaii Revised Statutes, as amended, for the  
furnishing of labor and/or materials up to and including \_\_\_\_\_.

Dated this \_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_.

CONTRACTOR

By \_\_\_\_\_  
Its

Witness:

\_\_\_\_\_

\_\_\_\_\_

(Address)

# CONSTRUCTION PAYMENT PROGRESS SCHEDULE BREAKDOWN

## HHFDC Payment Request Worksheet

Payment Request No:

**SAMPLE**

(A)	(B)	(C)	(D)	(C) x (D) (E)	(E) x 5% (F)	(E) - (F) (G)	Prior (G) (I)	(G) - (I) (J)
Description of Work	Account Number	Contract Amount	Percent Complete	Amount Earned to Date	Retention	Net Amount Earned	Previous Payments Received	Amount Due
Roads/Parking Areas	1450	236,000.00	0.00%	0.00	0.00	0.00	0.00	0.00
Concrete Walkways	1450	175,000.00	60.00%	105,000.00	5,250.00	99,750.00	83,125.00	16,625.00
Exterior Stairs/Steps	1450	75,000.00	50.00%	37,500.00	1,875.00	35,625.00	21,375.00	14,250.00
Fencing/Retaining Walls	1450	125,000.00	25.00%	31,250.00	1,562.50	29,687.50	29,687.50	0.00
Ground Work	1450	225,000.00	75.00%	168,750.00	8,437.50	160,312.50	149,625.00	10,687.50
Onsite Infrastructure	1450	200,000.00	65.00%	130,000.00	6,500.00	123,500.00	76,000.00	47,500.00
Electrical Distribution Systems	1450	250,000.00	50.00%	125,000.00	6,250.00	118,750.00	47,500.00	71,250.00
Site Lighting	1450	50,000.00	15.00%	7,500.00	375.00	7,125.00	7,125.00	0.00
Landscaping	1450	115,000.00	0.00%	0.00	0.00	0.00	0.00	0.00
Miscellaneous Site Work	1450	275,000.00	75.00%	206,250.00	10,312.50	195,937.50	182,875.00	13,062.50
Roofing	1460	434,000.00	70.00%	303,800.00	15,190.00	288,610.00	247,380.00	41,230.00
Heat/Cooling Systems	1460	20,000.00	80.00%	16,000.00	800.00	15,200.00	15,200.00	0.00
Exterior Structural Work	1460	25,000.00	66.80%	16,700.00	835.00	15,865.00	15,859.72	5.28
a. Conc Spall Repair	1460	25,000.00	62.00%	15,500.00	775.00	14,725.00	1,570.14	13,154.86
Waterproofing/Coating	1460	237,000.00	100.00%	237,000.00	11,850.00	225,150.00	225,150.00	0.00
Walkways/Lanais	1460	75,000.00	70.00%	52,500.00	2,625.00	49,875.00	17,812.50	32,062.50
Exterior Stairs	1460	80,000.00	50.00%	40,000.00	2,000.00	38,000.00	28,500.00	9,500.00
a. Conc Crack Repair	1460	20,000.00	0.70%	140.00	7.00	133.00	128.25	4.75
Electrical Systems	1460	367,450.00	55.00%	202,097.50	10,104.88	191,992.62	190,000.00	1,992.62
a. Install Metal Raceways	1460	18,750.00	40.00%	7,500.00	375.00	7,125.00	0.00	7,125.00
b. Install Copper Wires	1460	13,800.00	40.00%	5,520.00	276.00	5,244.00	0.00	5,244.00
Resident Protection	1460	24,000.00	100.00%	24,000.00	1,200.00	22,800.00	22,800.00	0.00
Mechanical System	1460	730,000.00	85.00%	620,500.00	31,025.00	589,475.00	554,800.00	34,675.00
Termite Control	1460	3,000.00	100.00%	3,000.00	150.00	2,850.00	2,850.00	0.00
Doors	1460	57,000.00	40.00%	22,800.00	1,140.00	21,660.00	21,660.00	0.00
Windows	1460	98,000.00	80.00%	78,400.00	3,920.00	74,480.00	46,550.00	27,930.00
Accessibility Work	1460	25,000.00	60.00%	15,000.00	750.00	14,250.00	9,500.00	4,750.00
Building Miscellaneous	1460	315,868.00	50.00%	157,934.00	7,896.70	150,037.30	150,037.30	0.00
Kitchen Work	1460	525,000.00	35.00%	183,750.00	9,187.50	174,562.50	124,687.50	49,875.00
Interior Stairs	1460	5,000.00	10.00%	500.00	25.00	475.00	0.00	475.00
Flooring	1460	100,000.00	44.00%	44,000.00	2,200.00	41,800.00	41,800.00	0.00
Bathroom Work	1460	295,625.00	35.00%	103,468.75	5,173.44	98,295.31	98,295.31	0.00
a. Patch opening to tub drain	1460	4,375.00	0.00%	0.00	0.00	0.00	0.00	0.00
Hazardous Material Abatement	1460	100,000.00	100.00%	100,000.00	5,000.00	95,000.00	95,000.00	0.00
Appliances	1465	2,000.00	20.00%	400.00	20.00	380.00	0.00	380.00
<b>SUBTOTAL</b>		<b>5,326,868.00</b>	<b>57.48%</b>	<b>3,061,760.25</b>	<b>153,088.01</b>	<b>2,908,672.24</b>	<b>2,506,893.22</b>	<b>401,779.01</b>
<b>Change Orders</b>								
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(I)	(J)
Description of Work	Account Number	Contract Amount	Percent Complete	Amount Earned to Date	Retention	Net Amount Earned	Previous Payments Received	Amount Due
CO #1-Electrical Distr. Sys.	1450	5,000.00	20.00%	1,000.00	50.00	950.00	0.00	950.00
CO #1-Electrical Systems	1460	15,000.00	0.00%	0.00	0.00	0.00	0.00	0.00
CO #2-Kitchen Work	1460	3,000.00	75.00%	2,250.00	112.50	2,137.50	0.00	2,137.50
CO #		0.00	0.00%	0.00	0.00	0.00	0.00	0.00
CO #		0.00	0.00%	0.00	0.00	0.00	0.00	0.00
CO #		0.00	0.00%	0.00	0.00	0.00	0.00	0.00
<b>TOTAL</b>		<b>23,000.00</b>	<b>14.13%</b>	<b>3,250.00</b>	<b>162.50</b>	<b>3,087.50</b>	<b>0.00</b>	<b>3,087.50</b>

1450	1,731,000.00	46.92%	812,250.00	40,612.50	771,637.50	597,312.50	174,325.00
1460	3,616,868.00	62.27%	2,252,360.25	112,618.02	2,139,742.23	1,909,580.72	230,161.51
1465	2,000.00	20.00%	400.00	20.00	380.00	0.00	380.00
<b>TOTAL</b>	<b>5,349,868.00</b>	<b>57.29%</b>	<b>3,065,010.25</b>	<b>153,250.52</b>	<b>2,911,759.73</b>	<b>2,506,893.22</b>	<b>404,866.51</b>